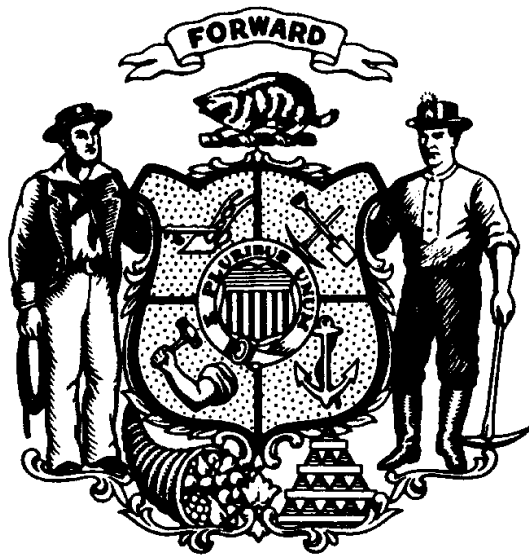


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 539**



Publication Date: November 14, 2000  
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## TABLE OF CONTENTS

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***Emergency Rules Now In Effect.******Pages 5 to 12.***

Administration:

Rules relating to public benefit fees.

Rules relating to energy conservation and efficiency and the renewable resource program.

Rules relating to low–income assistance public benefits.

Agriculture, Trade and Consumer Protection:

Rules relating to swine import and required tests.

Rules relating to fees required of agent municipalities inspecting retail food establishments.

Rules relating to an implied warranty on disease–free cattle and goats.

Rule relating to residential rental practices.

Rules relating to importing certain animals from a USDA–designated “non–modified accredited” state.

Commerce:

PECFA, Chs. Comm 46 and 47

Rules relating to Petroleum Environmental Cleanup Fund interagency responsibilities.

Rules relating to appeals under the PECFA program.

Health &amp; Family Services:

Community Services, Chs. HFS 30–

Rules relating to state Supplemental Security Income (SSI) payments.

Health &amp; Family Services:

Medical Assistance, Chs. HFS 100–108

Rules relating to the medicaid purchase plan.

Health &amp; Family Services:

Health, Chs. HFS 110–

Rules relating to the Health Risk–Sharing Plan.

Natural Resources:

Fish, Game, etc., Chs. NR 1–

Rules relating to deer hunting.

Rules relating to the 2000 migratory game bird season.

Rules relating to the stewardship program.

Natural Resources:

Environmental Protection–General, Chs. NR 100–

Rules relating to the brownfield site assessment grant program.

Natural Resources:

Environmental Protection–Investigation & Remediation, Chs. NR 700–

Rules relating to sites contaminated with petroleum products from petroleum storage tanks.

Public Service Commission:

Rules relating to the definition of fuel and permissible fuel costs.

Rules adopted creating s. PSC 2.06, relating to handling on confidential information [**First Appearance**]

Regulation and Licensing:

Rules relating to massage therapists and bodyworkers.

Revenue:

Rules relating to the tobacco settlement agreement.

Workforce Development:

Economic Support, Chs. DWD 11–59

Rule relating to W–2 Program disregard of 2000 census income.

**Scope Statements.**

Employee Trust Funds:

Financial Institutions – Banking:

Natural Resources:

**Notices of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse.**

Agriculture, Trade and Consumer Protection:

Elections Board:

Health and Family Services:

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board:

Transportation:

**Notices of Hearings or of Proposed Rules.**

Agriculture, Trade and Consumer Protection:

Elections Board:

**Pages 13 to 14.**

Relating to applicants of the Wisconsin Retirement System and the establishment of default benefits when applications are left uncorrected.

DFI–Bkg 8.04 – Relating to stating the name and location of office on bank checks.

Relating to advance notice requirement for demonstrations which attempt to influence public opinion on department lands.

Ch. NR 25 – Relating to commercial fishing – outlying waters.

Ch. NR 6 – Relating to snowmobile safety and enforcement programs.

Chs. NR 20, 21 and 50 – Relating to sport and commercial fishing on the inland, outlying and boundary waters of Wisconsin.

**Pages 15 to 16.**

Ch. ATCP 10 – Relating to the reimbursement of Johne's disease testing costs.

Ch. ATCP 11 – Relating to importing bovine animals, goats, cervids from a state designated by USDA as a tuberculosis "non–modified accredited" state.

s. ATCP 74.08 (1) – Relating to fees required on agent cities and counties that license and inspect retail food establishments.

Ch. ElBd 2 – Relating to the procedure for correcting previously filed nomination papers and the procedure for challenging nomination papers.

Ch. HFS 36 – Relating to comprehensive community services for persons with mental illness.

Ch. HFS 79 – Relating to state supplemental security income payments to low income and disabled residents.

Ch. HFS 133 – Relating to home health agencies.

Relating to clinical social work concentration and supervised clinical field training.

Relating to outdoor advertising sign annual fees.

**Pages 17 to 24.**

Hearings to consider revision of s. ATCP 10.21, relating to reimbursement of Johne's disease testing costs. [Hearing dates: 11/28/00, 11/30/00]

Hearings to consider revision to ch. ATCP 11, relating to importing animals from a state designated as a tuberculosis "non–modified accredited" state. [Hearing dates: 11/28/00, 11/30/00]

Proposed revision to ch. ElBd 2, relating to nomination papers.

Health and Family Services:

Community Services, Chs. HFS 30—

Hearing to consider ch. HFS 58, relating to the Kinship Care Program. [**Hearing date: 11/29/00**]

Health, Chs. HFS 110—

Hearings to consider revision of ch. HFS 133, relating to home health licensure.

[**Hearing dates: 11/28/00, 11/29/00, 11/30/00**]

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Hearings to consider revisions to chs. NR 1, 10, 12 and 19, relating to deer hunting and wildlife abatement and claims program. [**Hearing dates: 12/4/00, 12/5/00, 12/11/00, 12/12/00, 12/13/00 and 12/14/00**]

Public Service Commission:

Hearing to consider revision to s. PSC 163.04, relating to the telecommunications utilities price regulation productivity factor. [**Hearing date: 12/6/00**]

Transportation:

Hearing to consider revision of ch. Trans 201, relating to outdoor advertising sign annual fees. [**Hearing date: 11/30/00**]

***Notice of Submission of Proposed Rules to the Presiding Officer of Each House of the Legislature, Under S. 227.19, Stats.***

***Page 25.***

Athletic Trainers Affiliated Credentialing Board:

(CR 00–131) – Chs. AT 1 to 5

Commerce:

(CR 00–73) – Chs. Comm 20 to 25

Health and Family Services:

(CR 99–157) – Ch. HFS 175

Health and Family Services:

(CR 00–092) – Ch. HFS 110

Natural Resources:

(CR 00–87) – Ch. NR 101

Natural Resources:

(CR 00–89) – Chs. NR 161 to 163

Natural Resources:

(CR 00–93) – Ch. NR 168

Pharmacy Examining Board:

(CR 00–107) – Ch. Phar 8

Public Service Commission:

(CR 98–170) – Ch. PSC 179

Regulation and Licensing:

(CR 00–128) – Chs. RL 90 to 92

Regulation and Licensing:

(CR 00–141) – Ch. RL 7

Social Workers, Marriage and Family Therapists and Professional Counselors:

(CR 00–54) – Ch. SFC 8

Transportation:

(CR 00–121) – Ch. Trans 156

Transportation:

(CR 00–137) – Ch. Trans 4

Workforce Development:

(CR 00–127) – Ch. DWD 22 and chs. HSS 205 to 207, 225 and 244

Workforce Development:

(CR 00–129) – Chs. DWD 12 and 56

***Administrative Rules Filed with the Revisor of Statutes Bureau.***

***Page 26.***

Administration:

(CR 00–42) – Ch. Adm 12

Health and Family Services:

(CR 00–84) – Chs. HFS 101 to 103 and 108

Health and Family Services:

(CR 00–95) – Ch. HFS 120



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## EMERGENCY RULES NOW IN EFFECT

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### Administration – (3)

1. Rules adopted creating **ch. Adm 43**, relating to public benefits fees.

#### Exemption from finding of emergency

(See section 9101 (1zu) (a) of 1999 Wis. Act 9)

#### Analysis prepared by the Department of Administration:

Statutory authority: ss. 16.004 (1), 16.957 (2) (c) 4. and 5., and (4)(b), Stats.

Statute interpreted: s. 16.957 (2) (c) 4. and 5., and (4), Stats.

1999 Wis. Act 9 included major provisions relating to aspects of electric utility regulation, commonly referred to as “Reliability 2000.” That legislation created a new statutory framework within which public benefit programs relating to low-income energy assistance and energy conservation and renewable energy are continued and expanded. Under ss. 16.957(2)(c) and (4)(b), Stats., the Department of Administration is directed to promulgate rules setting fees to be collected by utilities from their customers, and establishing requirements and procedures related to those low-income and energy conservation programs. This rule provides mechanisms for setting, collecting, and reporting the fees, and related matters.

<b>Publication Date:</b>	<b>August 22, 2000</b>
<b>Effective Date:</b>	<b>August 22, 2000</b>
<b>Expiration Date:</b>	<b>January 19, 2001</b>

2. Rule adopted creating **ch. Adm 44**, relating to energy conservation and efficiency and renewable resource programs.

#### Exemption from finding of emergency

(See section 9101 (1zu) (am) of 1999 Wis. Act 9)

#### Analysis prepared by the Department of Administration:

Statutory authority: ss. 16.004(1) and 16.957(2)(c), 2., 2m. and 2n., Stats.

Statute interpreted: s. 16.957(2)(b) and (3)(b), Stats.

Under s. 16.957 (2) (c) 2, 2m., and 2n., Stats., the Department of Administration is required to promulgate rules for energy conservation and efficiency and renewable resource public benefits programs. The rule establishes requirements, procedures and criteria to be followed by program administrators in soliciting and selecting applications for grant funding to be awarded by the Department for energy programs established under s. 16.957 (2) (b), Stats.

The Department believes it is neither wise nor practical to include specific detail in this rule to cover programs that are not yet in

existence. These programs will be developed over a longer period of time, with a wide range of input from the Council on Utility Public Benefits, potential program providers, and recipient citizens. They will develop as the needs of the energy efficiency and conservation market becomes clearer and our collective knowledge is increased.

Examples of the variety of programs to be created under s. 16.957 (2) (b) 1., Stats., run the gamut from a simple rebate of a few cents for the purchase of energy efficient products or services to programs requiring complete engineering audits of industrial plants, arrangement of financing, performance contracting and multi-year performance monitoring. The requirements, procedures and related selection criteria necessary to implement these varying programs cannot be specified with detail in this rule. Rather, the rule is designed to allow flexibility for development of policies and procedures through detailed policy and procedure manuals for each program, consistent with Department practice for low-income assistance programs now in effect under ss. 16.385 and 16.39, Stats.

<b>Publication Date:</b>	<b>August 22, 2000</b>
<b>Effective Date:</b>	<b>August 22, 2000</b>
<b>Expiration Date:</b>	<b>January 19, 2001</b>

3. Rules adopted creating **ch. Adm 45**, relating to low-income assistance public benefits.

#### Exemption from finding of emergency

(See section 9101 (1zu) (am) of 1999 Wis. Act 9)

#### Analysis prepared by the Department of Administration:

Statutory authority: ss. 16.004 (1) and 16.957 (2) (c) 2., Stats.

Statute interpreted: s. 16.957 (2) (a), Stats.

Under s. 16.957 (2) (c), Stats., the Department of Administration is required to promulgate rules for low-income public benefits programs. The proposed rule establishes eligibility and application requirements and procedures for assistance under a low-income public benefits program established under s. 16.957 (2) (a), Stats.

It is the Department's understanding that the Legislature's intent for this rule was to build upon and transition from the Low-Income Home Energy Assistance Program (LIHEAP) and the Low-Income Weatherization Assistance Program (LIWAP) currently administered by the Department under ss. 16.385 and 16.39, Stats., respectively. The Department presently utilizes extensive, detailed policy and procedure manuals under which those programs operate. Annual plans are also prepared for each of these programs which are submitted to the federal government as required by the U.S. Department of Housing and Urban Development after extensive opportunities for public input, including public hearings. Because these programs, and the public benefits programs yet to be developed in concert with them under s. 16.957 (2) (a), Stats., must be implemented during the heating season, they must be able to react to significant fluctuations of weather, energy costs and energy shortages in a relatively short period of time. For these reasons, this proposed rule is intentionally succinct, yet flexible in order to account for the specific needs of low-income assistance programs envisioned.

<b>Publication Date:</b>	<b>August 22, 2000</b>
<b>Effective Date:</b>	<b>August 22, 2000</b>
<b>Expiration Date:</b>	<b>January 19, 2001</b>

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### Agriculture, Trade & Consumer Protection – (5)

1. Rules adopted revising **s. ATP 11.20** and creating **ss. ATP 11.01 (11m) and 11.73**, relating to swine import and required tests.

#### Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (department) finds that an emergency exists and that an emergency rule is necessary to protect public health,

safety and welfare. The facts constituting the emergency are as follows:

- Pseudorabies is a highly contagious disease of swine and other livestock. Wisconsin initiated its pseudorabies program in 1976. Since that time, the department has worked diligently, pork producers have sacrificed significantly and the state has paid substantial costs to eradicate the disease. In 1997, the National Pseudorabies Control Board recognized Wisconsin as a pseudorabies stage IV state. If there are no incidents of pseudorabies in the state before October, 2000, the state will be classified as a pseudorabies stage V state (free of the disease) at that time. Classification as a pseudorabies stage IV or V state creates significant benefits in the swine export market.

- There has been a significant increase in pseudorabies cases reported in several pseudorabies stage II and III states. In the past, Wisconsin pork producers have imported many swine from the pseudorabies stage II and III states which are now experiencing an increase in pseudorabies.

- If pseudorabies spreads to Wisconsin, the Wisconsin pork industry will be hampered in its ability to produce and export swine and pork products.

- The increased prevalence of pseudorabies in states from which Wisconsin import shipments originate creates a substantial threat to the pork industry in Wisconsin. The department finds that an emergency rule is needed to minimize the threat of pseudorabies.

<b>Publication Date:</b>	<b>May 25, 2000</b>
<b>Effective Date:</b>	<b>May 25, 2000</b>
<b>Expiration Date:</b>	<b>October 22, 2000</b>
<b>Hearing Date:</b>	<b>June 29, 2000</b>
<b>Extension Through:</b>	<b>December 20, 2000</b>

2. Rule adopted amending s. **ATCP 74.08 (1)**, relating to fees required of agent cities and counties that license and inspect retail food establishments.

#### Finding of Emergency

The Department of Agriculture, Trade and Consumer Protection ("department") finds that an emergency rule is necessary to promote the public welfare, and prevent unnecessary economic hardship on cities and counties that license and inspect retail food establishments for the department. The facts constituting the emergency are as follows:

(1) The department licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., the department may enter into an agreement with a city or county, under which the city or county licenses and inspects retail food establishments for the department. The department monitors and assists the agent city or county. From the license fees that it collects, an agent city or county must pay the department an annual fee to cover the department's costs. The department sets the fee by rule.

(2) By rule, the department establishes license fees for retail food establishments that it licenses directly. An agent city or county may charge a license fee that differs from the state license fee established by the department.

(3) Under current rules, an agent city or county must pay the department an annual fee, for each retail food establishment, that is equal to 20% of the license fee that the department would charge if it licensed the establishment directly.

(4) Effective February 1, 1998; the department increased license fees for retail food establishments that it licenses. The fee increase was caused, in part, by a legislative budget change that required the department to recover 60% (rather than 50%) of its program costs from license fees. The fee change approximately doubled the department's license fees, increasing the maximum retail food license fee from \$210 to \$450 and the minimum fee from \$42 to \$90.

(5) The department's 1998 license fee increase incidentally increased the annual fees that agent cities were required to pay to the department, beginning with the license year ending June 30, 1999. As a result of the department's license fee increase, agent cities and counties were required to pay the department 20% of the increased license fee amounts. This change effectively doubled city and county fee payments to the department and imposed a serious financial burden on those city and county governments. The increased fee payments also exceeded the amounts needed to cover the department's costs under agent city and agent county agreements.

(6) In order to reduce the financial burden on local governments and eliminate the department's surplus receipts, it is necessary to reduce the agent city and county percentage fee payment from 20% to 10% beginning with the license year that ends June 30, 2000. The public welfare necessitates that the department make this rule change by June 30, 2000. However, it is not possible to make this rule change by June 30 using normal rulemaking procedures. The department is, therefore, adopting this rule change by emergency rule, pending adoption by normal rulemaking procedures.

<b>Publication Date:</b>	<b>June 30, 2000</b>
<b>Effective Date:</b>	<b>July 1, 2000</b>
<b>Expiration Date:</b>	<b>November 29, 2000</b>

3. Rules adopted creating ss. **ATCP 10.21 (1m)** and **10.63 (1m)**, relating to an implied warranty that cattle and goats are free of paratuberculosis (also known as Johne's disease).

#### Finding of Emergency

(1) Paratuberculosis, also known as Johne's disease, is an infectious and communicable disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

(2) 1989 Wis. Act 277 established a Johne's disease "implied warranty" in the sale of cattle and goats. Under the "implied warranty" law, s. 95.195, Stats., a seller implicitly warrants to a buyer that cattle and goats are free of Johne's disease *unless* the seller complies with certain testing and disclosure requirements. If cattle or goats are infected with Johne's disease at the time of sale, and the seller has *not* complied with applicable testing and disclosure requirements, the buyer may sue the seller for damages under the "implied warranty."

(3) The "implied warranty" law protects buyers of cattle and goats, and gives sellers an incentive to test their animals for Johne's disease. A seller may avoid the "implied warranty" by testing and disclosing. Testing is important for the ultimate control of this serious disease.

(4) 1999 Wis. Act 160 changed the "implied warranty" law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized the department of agriculture, trade and consumer protection ("DATCP") to cover *other* diseases and animal species by rule. DATCP must implement the new law by rule. The "implied warranty" no longer applies to *any* animals or diseases (including Johne's disease) unless DATCP identifies those animals and diseases by rule.

(5) DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johne's disease in cattle and goats. The Legislature, in a related action, appropriated \$100,000 in grant funds to help herd owners pay for Johne's disease testing in FY 2000–2001. DATCP has also adopted new Johne's disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. The new rules, contained in ss. 10.21 and 10.63, Wis. Adm. Code, clearly indicate DATCP's understanding and intent that the new law would apply to Johne's disease in cattle and goats. However, the new rules are technically flawed, in that they fail to state *explicitly* that the new law applies to Johne's disease in cattle and goats. This emergency rule remedies that technical flaw on a temporary basis, pending the adoption of "permanent" remedial rules.

(6) This emergency rule is needed to resolve any possible challenge or uncertainty related to the coverage of the new "implied warranty" law. This emergency rule clarifies that the "implied warranty" law applies to Johne's disease in cattle and goats. This emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease of cattle and goats, will protect buyers of cattle and goats, will promote certainty in commercial transactions, and will prevent unnecessary litigation related to the applicability of the "implied warranty" law.

<b>Publication Date:</b>	<b>June 30, 2000</b>
<b>Effective Date:</b>	<b>July 1, 2000</b>
<b>Expiration Date:</b>	<b>November 29, 2000</b>
<b>Hearing Date:</b>	<b>July 27, 2000</b>



4. Rule adopted repealing **s. ATCP 134.06 (3) (c) note and creating s. ATCP 134.06 (3) (d)**, relating to residential rental practices.

#### Exemption from finding of emergency

On June 21, 2000, the Legislature's Joint Committee for Review of Administrative Rules (JCRAR) found that the "note" to s. ATCP 134.06 (3) (c) is actually a rule and directed DATCP to adopt the "note" as an emergency rule. According to s. 227.26 (2) (b), Stats., DATCP must promulgate the emergency rule under s. 227.24 (1) (a), Stats., within 30 days after the JCRAR directs DATCP to do so. Because the JCRAR has directed DATCP to adopt this emergency rule, DATCP is not required to make any other finding of emergency.

#### Analysis prepared by the Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state landlord–tenant rules contained in ch. ATCP 134, Wis. Adm. Code. These rules affect over 1.5 million Wisconsin residents.

This emergency rule modifies current residential rental practices rules related to security deposit withholding. Under current rules, a landlord may not withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible. A "note" to s. ATCP 134.06 (3) (c) also states that a landlord may not withhold from a tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant neglect.

**Publication Date:** July 20, 2000  
**Effective Date:** July 20, 2000  
**Expiration Date:** December 18, 2000

5. Rules adopted creating **ch. ATCP 16**, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non–modified accredited" state.

#### Finding of Emergency

(1) Bovine tuberculosis is a contagious, infectious and communicable disease caused by *Mycobacterium bovis* (*M. bovis*). It affects cattle, bison, deer, elk, goats and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts. Bovine tuberculosis causes weight loss and general debilitation, and can be fatal.

(2) Wisconsin is currently classified by the United States Department of Agriculture (USDA) as "accredited–free" for tuberculosis.

(3) The USDA recently reclassified Michigan from "accredited–free" to "non–modified accredited," reflecting a higher risk of bovine tuberculosis.

(4) A significant number of bovine animals, goats and cervids are imported to Wisconsin from Michigan each year.

(5) The last known case of bovine tuberculosis in cattle in Wisconsin was confirmed in an animal imported from Michigan.

(6) If bovine tuberculosis becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in this state.

(7) An emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease in cattle, goats and cervids and will help protect the marketability of Wisconsin–raised animals.

**Publication Date:** August 11, 2000  
**Effective Date:** August 11, 2000  
**Expiration Date:** January 8, 2001  
**Hearing Date:** September 19, 2000

### Commerce – (2)

(PECFA – Chs. Comm 46–47)

1. Rules adopted creating **ch. Comm 46**, relating to "Petroleum Environmental Cleanup Fund Interagency Responsibilities," and relating to site contaminated with petroleum products from petroleum storage tanks.

#### Exemption from finding of emergency

(See section 9110 (3yu) 1999 Wis. Act 9)

#### Analysis prepared by the Department of Commerce

Statutory authority: ss. 227.11 (2)(a) and 227.24 and s. 9110 (3yu)(b) of 1999 Wis. Act 9.

Statutes interpreted: ss. 101.143, 101.144, 292.11, and 292.31 and ch. 160

The proposed ch. Comm 46 is identical to ch. NR 746 that is being promulgated by the Department of Natural Resources.

Chapter Comm 46 provides that the Department of Natural Resources has authority for "high–risk sites" and that the Department of Commerce has authority for "low and medium risk sites." The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a "high–risk site" or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter Comm 46 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.
2. Determining when sites may close.
3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum–contaminated site.
4. Tracking the achievement of remediation progress and success.
5. Reporting of program activities.

**Publication Date:** May 17, 2000  
**Effective Date:** May 18, 2000  
**Expiration Date:** September 1, 2000  
**Hearing Dates:** June 15, July 10 & 12, 2000  
**Extension Through:** December 29, 2000

2. Rules adopted amending **s. Comm 47.53**, relating to appeals of decisions issued under the Petroleum Environmental Cleanup Act (PECFA) program.

#### Finding of Emergency

The Department of Commerce finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The department is receiving funds from a bonding initiative to enable it to issue approximately 3,500 decisions on applications for PECFA funding which had been awaiting the availability of funding. Because these decisions will be issued over a very short time frame, parties receiving decisions and law firms representing them, will be required to review and analyze a large volume of decisions to determine whether they wish to appeal specific departmental decisions. Given the large number of decisions and the normal rate of appeals, it is reasonable to expect that the public will be required to prepare and file a large volume of appeals within a short time period. Attorneys, lenders and consultants representing multiple claimants have expressed concern about the workload associated with having to review decisions and draft appeals on the higher volume of decisions issued by the department within the current 30 day window. The emergency rule temporarily expands the filing period from 30 days to 90 days to provide additional time to evaluate decisions and determine whether an appeal should be filed. The rule covers the time period when the highest volume of decisions are to be issued.

**Publication Date:** February 15, 2000  
**Effective Date:** February 15, 2000  
**Expiration Date:** July 14, 2000  
**Hearing Date:** March, 27, 2000  
**Extension Through:** October 11, 2000

## Health & Family Services

(Community Services, Chs. HFS 30–)

Rules were adopted creating **ch. HFS 79**, relating to state supplemental security income payments.

### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 49.77 and 49.775, Stats., authorize the Department to administer Supplemental Security Income (SSI) state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. These SSI payments are funded by state general purpose revenue and federal Temporary Assistance for Needy Families (TANF) grant funding in excess of \$140,000,000 per state fiscal year. These payments are distributed monthly to approximately 100,000 beneficiaries and their dependent children. Neither s. 49.77 or 49.775, Stats., direct the Department to develop administrative rules to administer the program.

An unavoidable aspect of the program is the Department's need to periodically recover payments incorrectly made to benefit recipients. Overpayments and incorrect payments occur due to delays in transmission of eligibility and pricing information between the federal Social Security Administration and the Department and are not due to the Department's error or omission. On November 24, 1999, by order of the Wisconsin Court of Appeals, District II, the Department was found, absent administrative rule, to lack the authority to administratively recoup benefits overpaid to recipients who were ineligible for the benefits or to whom the Department paid an incorrect amount of benefits. The Department sought to appeal the decision to the Wisconsin Supreme Court, but recently learned that the Supreme Court will not hear the case. The Department's inability to recover payments made in error will cost the Department about \$10,000 per month. Developing and promulgating permanent administrative rules to address the Court's decision will require at least 7 months, thereby costing the Department approximately another \$70,000. The Department deems this unanticipated expense a threat to the public welfare insofar as Wisconsin and federal taxpayers should not be called upon to shoulder the burden of these unanticipated and undeserved expenses. Therefore, the Department is promulgating this emergency rule until the Department can promulgate a similar permanent rule.

This emergency rule provides the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to again effectively administer both state and federal public welfare funding. By issuing this rule, the Department will effectively recover taxpayer monies to which recipients were not entitled, pending the promulgation of permanent rules.

<b>Publication Date:</b>	<b>September 5, 2000</b>
<b>Effective Date:</b>	<b>September 5, 2000</b>
<b>Expiration Date:</b>	<b>February 2, 2001</b>

## Health & Family Services

(Medical Assistance, Chs. HFS 101–108)

Rules adopted revising **chs. HFS 102, 103 and 108**, relating to the medicaid purchase plan.

### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

This order creates rules that specify the manner in which a new program called the Medicaid Purchase Plan, established under s. 49.472, Stats., as created by 1999 Wis. Act 9, will operate. Under the Medicaid Purchase Plan, working adults with disabilities whose family net income is less than 250% of the poverty line are eligible to purchase Medical Assistance, the name given to Medicaid in

Wisconsin, on a sliding-fee scale. The order incorporates the rules for operation of the Medicaid Purchase Plan into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the Medical Assistance program.

The Medicaid Purchase Plan is projected to provide health care coverage to 1,200 Wisconsin residents with disabilities by the end of Fiscal Year 2001.

Health care coverage under the Medicaid Purchase Plan is identical to the comprehensive package of services provided by Medical Assistance. Individuals enrolled in the Medicaid Purchase Plan would also be eligible for Wisconsin's home and community-based waivers under s. 46.27, Stats., provided they meet the functional criteria for these waivers.

Department rules for the operation of the Medicaid Purchase Plan must be in effect before the Medicaid Purchase Plan may begin. The program statute, s. 49.472, Stats., as created by Act 9, effective October 27, 1999, states that the Department is to implement the Medical Assistance eligibility expansion under this section not later than January 1, 2000, or 3 months after full federal approval, whichever is later. Full federal approval was received on January 7, 2000. The Department is publishing the rules by emergency order with an effective date of March 15, 2000 to meet the expected program implementation date and the legislative intent in order to provide health care coverage as quickly as possible to working people with disabilities.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate the Medicaid Purchase Plan and in the process provide more specificity than s. 49.472, Stats., as created by Act 9, regarding the non-financial and financial conditions of eligibility for individuals under the Medicaid Purchase Plan; define whose income is used when determining eligibility and the monthly premium amount; explain statutory conditions for continuing eligibility; explain how the monthly premium amount is calculated; describe the processes associated with the independence account; and set forth how the Department, in addition to providing Medical Assistance coverage, is to purchase group health coverage offered by the employer of an eligible individual or an ineligible family member of an eligible member for the Medicaid Purchase Plan if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

<b>Publication Date:</b>	<b>March 15, 2000</b>
<b>Effective Date:</b>	<b>March 15, 2000</b>
<b>Expiration Date:</b>	<b>August 12, 2000</b>
<b>Hearing Dates:</b>	<b>June 15, 16, 19 &amp; 20, 2000</b>
<b>Extension Through:</b>	<b>November 27, 2000</b>

## Health & Family Services

(Health, Chs. HFS 110–)

Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk-Sharing Plan (HIRSP).

### Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. Department staff consulted with the Health Insurance Risk-Sharing Plan (HIRSP) Board of Governors on April 26, 2000 on the rules, as required by s. 149.20, Stats.

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty-four percent of the 8,427 HIRSP policies in effect in March 2000, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 12.4%. Rate increases for specific policyholders range from 3.5% to 15.0%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. This increase reflects industry-wide

premium increases and takes into account the increase in costs associated with Plan 1 claims. According to state law, HIRSP premiums cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market. The average 12.4% rate increase for Plan 1 is the minimum increase necessary to maintain premiums at the lowest level permitted by law.

A second type of medical coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Sixteen percent of the 8,427 HIRSP policies in effect in March 2000, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 18.2%. Rate increases for specific policyholders range from 7.5% to 21%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect industry-wide cost increases and adjust premiums to a level that more accurately reflects actual claim costs for Plan 2 policyholders.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles. Policyholders are to pay 60% of the costs of HIRSP.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 1999. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2000. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$10,119,482. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$9,898,358. On April 26, 2000, the HIRSP Board of Governors approved the calendar year 1999 reconciliation process and the HIRSP budget for the plan year July 1, 2000 through June 30, 2001.

<b>Publication Date:</b>	<b>June 30, 2000</b>
<b>Effective Date:</b>	<b>July 1, 2000</b>
<b>Expiration Date:</b>	<b>November 29, 2000</b>

### **Natural Resources – (3)**

(Fish, Game, etc., Chs. NR 1–)

1. Rules adopted revising **ch. NR 10**, relating to deer hunting in certain deer management units.

#### **Finding of Emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and forest resources, and to minimize deer nuisance problems, thereby protecting the public peace, health, safety and welfare. Normal rule-making procedures will not allow the establishment of these changes by August 1. Failure to modify the rules will result in excessively high deer populations well above established goal levels, causing substantial deer damage to agricultural lands and forest resources, and potential for disease.

<b>Publication Date:</b>	<b>May 15, 2000</b>
<b>Effective Date:</b>	<b>August 4, 2000</b>
<b>Expiration Date:</b>	<b>January 1, 2001</b>

2. Rules adopted revising **ch. NR 10**, relating to the 2000 migratory game bird season.

#### **Finding of Emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify the rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

<b>Publication Date:</b>	<b>September 1, 2000</b>
<b>Effective Date:</b>	<b>September 1, 2000</b>
<b>Expiration Date:</b>	<b>January 29, 2001</b>
<b>Hearing Date:</b>	<b>October 16, 2000</b>

3. Rules adopted creating **s. NR 1.445** and revising **ch. NR 51**, relating to the stewardship program.

#### **Exemption from finding of emergency**

Emergency rules are necessary for the department to act as authorized under s. 23.0917, Stats., as created by 1999 Wis. Act 9. According to section 9136(10g) of this Act, the department is not required to make a finding of emergency or provide evidence that promulgating this emergency rule is necessary for the preservation of public peace, health, safety or welfare. In addition, the emergency rules promulgated under this authority remain in effect until June 30, 2001, or until the date on which the corresponding permanent rules take effect, whichever is sooner.

#### **Analysis prepared by the Department of Natural Resources:**

Statutory authority: ss. 227.11(2), 227.24, Stats. and s. 9136 (10g), 1999 Wis. Act 9

Statutes interpreted: ss. 23.09(19), (20) and (20m), 23.0917, 23.092, 23.094, 23.096, 23.098, 23.17, 23.175, 23.197, 23.27, 23.29, 23.295, 30.24 and 30.277, Stats.

The emergency rule:

- Implements a statutory change that requires the department to obtain county approval for acquisitions in counties where greater than 66% of the land is publicly owned.
- Moves three stewardship grant programs (local park aids, urban green space, and urban rivers) from ch. NR 50 to ch. NR 51. Improves grant administration by combining all stewardship grant programs into one chapter.
- Revises and expands program definitions, including definitions for nature-based outdoor recreation and middle kettle moraine, to clarify terms, reflect statutory changes and improve grant administration.
- Implements a statutory change that expands grant eligibility to include non 501(c)(3) organizations.
- Reorganizes the structure of chapter 51 to incorporate new programs and local government programs.
- Implements statutory changes that identify priorities and expand the purposes for which nonprofit conservation organizations can receive grants. Makes minor revisions to improve grant administration.
- Makes minor revisions to bring the natural areas program in line with statutory changes.
- Establishes the administrative framework for the new bluff protection program. Defines "bluff" and sets program priorities.
- Makes minor revisions in the habitat areas and fisheries program to bring the program in line with statutory changes and improve grant administration.
- Establishes the administrative framework for acquisition of property by the department and nonprofit conservation organizations to preserve wild lakes. Defines "wild lake."
- Makes minor revisions to the stream bank program to bring the program in line with statutory changes.
- Makes minor revisions to the state trails program to improve grant administration.
- Implements a statutory change that makes nonprofit conservation organizations eligible for grants for state property development. Revises grant priorities and makes minor revisions to improve administration of the state property development grant program.

- Establishes the administrative framework and sets priorities for the new Baraboo Hills subprogram.
- Clarifies and streamlines the administration of local assistance grants to governmental units.
- Clarifies and streamlines the administration of the local park aids, urban green space, and urban rivers grant programs which provide grant funds for governmental units and nonprofit conservation organizations. Implements statutory changes that require that all grants issued under these programs be for nature-based outdoor recreation. Lists eligible nature-based projects and sets grant priorities. Also implements a statutory change that allows “shoreline enhancements” to be funded under the urban rivers program and provides a list of typical shorelines enhancements that will qualify for the program.
- Establishes the administrative framework for the new acquisition of development rights program that provides grant funds to local governments and nonprofit conservation organizations. Sets priorities and identifies other factors that will be considered in awarding grants.
- Makes minor revisions to improve administration of the Heritage state park and forest trust program.

<b>Publication Date:</b>	<b>September 1, 2000</b>
<b>Effective Date:</b>	<b>September 1, 2000</b>
<b>Expiration Date:</b>	<b>See section 9136 (10g), 1999 Wis. Act 9</b>
<b>Hearing Dates:</b>	<b>November 1 &amp; 2, 2000</b>

## Natural Resources

(Environmental Protection – General, Chs. NR 100–)

Rules adopted creating **ch. NR 168**, relating to the brownfield site assessment grant program administration.

### Finding of Emergency

This rule implements the brownfield site assessment grant program. Created in the 1999–2000 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program provides grants to eligible local governments to cover the costs of brownfield site assessment activities such as: investigating environmental contamination of an eligible site or facility; demolishing structures located on an eligible site; removing certain abandoned containers; abating asbestos as part of demolition activities; removing underground hazardous substance storage tank systems; and removing underground petroleum product storage tank systems. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. The legislature appropriated \$1.45 million for the 99–01 biennium for these grants. Local governments are required to contribute matching funds as cash or in-kind, or both, equal to 20% of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that 70% of available funds are to be allocated to “small” grants (i.e. a grant award between \$2,000 and \$30,000); and 30% of available funds are to be allocated to “large” grants (i.e. a grant award of more than \$30,000 but not more than \$100,000). Act 9 required that the department promulgate these rules as necessary to administer the program, and directed the department to promulgate them as emergency rules.

<b>Publication Date:</b>	<b>July 10, 2000</b>
<b>Effective Date:</b>	<b>July 10, 2000</b>
<b>Expiration Date:</b>	<b>December 8, 2000</b>

## Natural Resources

(Environmental Protection–Investigation and Remediation, Chs. NR 700–)

Rules adopted revising **chs. NR 700, 716, 720, 722, 726** and creating **ch. NR 746**, relating to site contaminated with petroleum products discharged from petroleum storage tanks.

### Exemption from finding of emergency

(See section 9110 (3yu) 1999 Wis. Act 9)

The proposed ch. NR 746 is identical to ch. Comm 46 that is being promulgated by the Department of Commerce.

Chapter NR 746 provides that the Department of Natural Resources has authority for “high-risk sites” and that the Department of Commerce has authority for “low and medium risk sites.” The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a “high-risk site” or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter NR 746 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.
2. Determining when sites may close.
3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum-contaminated site.
4. Tracking the achievement of remediation progress and success.
5. Reporting of program activities.

The amendments and new provisions that are proposed to be added to chs. NR 700, 716, 720, 722 and 726, as part of this rule package, consist of cross-references to ch. NR 746 that are proposed to be inserted in chs. NR 700, 716 and 726, and exemptions from the requirements in chs. NR 720 and 722 that would conflict with the requirements in ch. NR 746: that is, an exemption from the soil cleanup standards in ch. NR 720 and the remedial action option evaluation requirements in ch. NR 722 for those sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy the risk criteria in s. NR 746.06 and are eligible for closure under s. NR 746.07.

<b>Publication Date:</b>	<b>May 17, 2000</b>
<b>Effective Date:</b>	<b>May 18, 2000</b>
<b>Expiration Date:</b>	<b>September 1, 2000</b>
<b>Hearing Dates:</b>	<b>June 15, July 10 &amp; 12, 2000</b>
<b>Extension Through:</b>	<b>December 29, 2000</b>

## Public Service Commission – (2)

1. Rules adopted amending **s. PSC 116.03(4)** and creating **s. PSC 116.04(6)**, relating to the definition of fuel and permissible fuel costs.

### Finding of Emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend ch. PSC 116 Wis. Adm. Code. Amending the definition of “fuel” in s. PSC 116.03(4) and creating s. PSC 116.04(6) would allow investor-owned utilities the ability to incorporate the cost of voluntary curtailment into the cost of fuel to increase the reliability of electric service in Wisconsin for the summer of 2000 and beyond. This change would assist in implementing the requirement of 1999 Wis. Act 9, s. 196.192(2)(a), Stats.

<b>Publication Date:</b>	<b>June 5, 2000</b>
<b>Effective Date:</b>	<b>June 5, 2000</b>
<b>Expiration Date:</b>	<b>November 2, 2000</b>

2. Rules adopted creating **s. PSC 2.06**, relating to procedures for the confidential treatment of records.

### Exemption from finding of emergency

At the direction of the Joint Committee for Review of Administrative Rules under s. 227.26 (2) (b), Stats., the Commission adopts a rule to create s. PSC 2.06, Wis. Adm. Code, relating to procedures for the confidential treatment of records.

### Analysis by the Public Service Commission

Statutory authority: ss. 196.02(1) and (3), 227.11, 227.24 and 227.26, Stats.

Statutes interpreted: ss. 196.14, 196.72 and 196.795(9), Stats.

On August 15, 2000, the Commission voted to promulgate administrative rules on requests for confidential handling of

documents filed with the Commission. On September 20, 2000, the Joint Committee for Review of Administrative Rules directed the Commission to adopt a rule on the subject under s. 227.26(2)(b), Stats. This rule creates a process for obtaining a designation of confidential status. Under the rule, a determination on whether information shall be treated confidentially shall be made at the time the information is given to the Commission. Under previous Commission procedures, if a person filing a document sought confidential treatment of information in the document, the filer could do so by identifying the grounds under which confidentiality could be granted. The Commission would accept the filing, but the acceptance did not constitute a determination that public access to the information would not be permitted. The Commission would determine if confidential status should be granted when a request for that information was made by another person.

Under this rule, a person who wishes the Commission to keep confidential information in the possession of the Commission, or requested by the Commission, must make an application for confidential status. The application must identify the information for which confidential treatment is sought and identify the authority under which confidential status should be granted. Within 21 days after receiving an application, the Commission may seek additional information from the applicant, if needed, to make a confidentiality determination. The applicant must respond within 30 days to the information request.

The Commission will make a determination on a confidentiality request within 30 days of receiving the additional information or within 30 days of the filing of the application if no additional information is needed. The determination will specify what, if any, information is given confidential treatment and the basis for that determination.

The Commission will give the applicant written notice of its determination. The Commission shall post all determinations regarding confidentiality on its website and may give other appropriate notice. If an applicant is authorized to file information confidentially in the context of a Commission proceeding, the applicant shall serve a copy of the determination on all persons listed on the service list for that proceeding.

**Publication Date:** October 23, 2000  
**Effective Date:** October 23, 2000  
**Expiration Date:** March 22, 2001

## Regulation and Licensing

Rules adopted revising **chs. RL 90 to 92**, relating to educational and examination requirements for massage therapists and bodyworkers.

### Exemption from finding of emergency

Section 2 of 1999 Wis. Act 98 states that the department is not required to make a finding of emergency and that the department need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules.

### Analysis prepared by the Department of Regulation and Licensing:

Statutory authority: s. 227.11 (2), Stats., and s. 440.982 (1) (b), Stats., as amended by 1999 Wis. Act 98.

Statutes interpreted: ss. 440.03 (1) and 440.982 (1) (a) and (b), Stats.

The emergency rule revision to chs. RL 90, 91 and 92 is necessary to implement 1999 Wis. Act 98, relating to educational and examination requirements for massage therapists and bodyworkers. The rules redefine an approved course of instruction to state that a course of instruction may now be approved by the department in addition to being offered by a school approved by the Educational Approval Board under s. 45.54, Stats. Prior to 1999 Wis. Act 98, an approved course of instruction could only be offered by a school approved by the Educational Approval Board.

The rules provide that a course of instruction approved by the department is either: (1) an associate degree program, or a vocational

diploma program in massage therapy or bodywork offered by a technical college, or (2) a course of instruction in massage therapy or bodywork offered by a school accredited by an accrediting agency recognized by the U.S. Department of Education, or the Commission on Massage Training Accreditation.

An approved course of instruction must also meet the minimum requirements set forth in s. RL 92.02 (5), consisting of 600 classroom hours satisfying the subject area requirements listed in that section. Additional amendments renumber those remaining sections where affected.

SECTIONS 2, 4 and 6 create definitions of accrediting agency, associate degree program and vocational diploma program.

SECTION 3 renumbers and amends a provision to allow the department to approve a course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 7 amends the introduction to s. RL 91.01, removing a reference to a section that is deleted.

SECTION 8 repeals a provision relating to a registration that is no longer offered.

SECTION 9 renumbers and amends a provision relating to an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 11 renumbers and amends provisions relating to successful completion of examinations required for registration.

SECTION 13 amends a provision relating to the submitted proof pertaining to completion of an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 14 repeals a reference to a formerly approved course of instruction and creates a provision that a course of instruction from a school that is not approved by the educational approval board be from a school that is either a technical college or accredited by an accrediting agency.

SECTION 15 amends provisions to require evidence that the applicant completed a course in adult cardiopulmonary resuscitation.

**Publication Date:** September 3, 2000  
**Effective Date:** September 3, 2000  
**Expiration Date:** January 31, 2001  
**Hearing Date:** October 3, 2000

## Revenue

Rules were adopted creating **s. Tax 9.69**, relating to the Master Settlement Agreement between the state of Wisconsin and tobacco product manufacturers.

### Exemption from finding of emergency

Under a nonstatutory provision in 1999 Wis. Act 122, the Department of Revenue is authorized to promulgate an emergency rule. The emergency rule is for the purpose of setting forth the requirements and methods to be used to ascertain the amount of Wisconsin excise tax paid each year on cigarettes of each tobacco product manufacturer that elects to place funds in a qualified escrow fund or, if the department deems it appropriate, is a participating manufacturer under the Master Settlement Agreement between the state and tobacco product manufacturers. The emergency rule shall cover the period from the effective date of 1999 Wis. Act 122, May 23, 2000, to the date a permanent rule becomes effective. (Note: The department is required under s. 895.10 (4), Stats., as created by 1999 Wis. Act 122, to promulgate a rule and is required under a nonstatutory provision to submit a proposed permanent rule to the Legislative Council by September 1, 2000.)

A nonstatutory provision in 1999 Wis. Act 122 provides that the department is not required to provide a finding of emergency or to provide evidence that an emergency rule is necessary for the preservation of the public peace, health, safety or welfare.

The rule is therefore promulgated as an emergency rule without a finding of emergency and without evidence that an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The rule shall take effect upon publication in the official state newspaper and shall apply retroactively to sales of cigarettes on or after May 23, 2000, as provided in s. 895.10 (2) (intro.), Stats., as created by 1999 Wis. Act 122. Certified copies of this rule have

been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

<b>Publication Date:</b>	<b>August 17, 2000</b>
<b>Effective Date:</b>	<b>August 17, 2000</b>
<b>Expiration Date:</b>	<b>January 14, 2001</b>
<b>Hearing Date:</b>	<b>September 18, 2000</b>

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### **Workforce Development**

(Economic Support, Chs. DWD 11–59)

Rules adopted creating **s. DWD 12.28**, relating to Wisconsin works disregard of year 2000 census income.

#### **Finding of Emergency**

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A

statement of facts constituting the emergency is:

The Department of Workforce Development is acting under its statutory authority to establish additional eligibility criteria and specify how eligibility criteria are to be administered for the Wisconsin Works (W–2) program. The department is promulgating a rule to exclude income earned from temporary employment with the U.S. Census Bureau in determining W–2 and child care eligibility and child care copayments. The rule will contribute to the welfare of the people of Wisconsin by broadening the pool of available workers to help ensure an accurate Census count, particularly in low-income neighborhoods. The rule must be effective immediately because temporary Census employment is expected to begin April 2000 and last two to six months. DWD will not be seeking a permanent rule on this issue.

<b>Publication Date:</b>	<b>April 9, 2000</b>
<b>Effective Date:</b>	<b>April 9, 2000</b>
<b>Expiration Date:</b>	<b>September 6, 2000</b>
<b>Hearing Date:</b>	<b>May 15, 2000</b>
<b>Extension Through:</b>	<b>December 31, 2000</b>

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### Employee Trust Funds

#### Subject

The process of applying for Wisconsin Retirement System (WRS) benefits can be complex. Applicants may fail to complete portions of their applications or may fill them out incorrectly, which results in applications requiring corrections. Applicants must also provide certain basic information on benefit applications in order for the Department to determine with certainty who is applying for benefits and the specific benefits for which they are applying. Applicants may also decide to change selections on the application or provide additional documentation that can affect the benefits payable. The statutes and administrative codes do not provide clear guidelines for most of these transactions, and clarification is needed both to provide consistency on the treatment of all applicants and to protect the interests of the applicants and the trust fund.

#### Description of Policy Issues

*Objectives of the Rule.* This proposed rule has several objectives, including assuring that the Department is able to determine with certainty who has applied for Wisconsin Retirement System benefits, the type of benefits for which they are applying and the benefit effective date, and to establish the default benefits which would be payable in situations where applications are not corrected or applicants die before the applications can be corrected. The proposed rule would also codify deadlines for certain transactions that are not currently addressed in either the statutes or administrative code, such as changing from a lump sum to a monthly annuity or vice versa, how long after the final retirement benefit determination the Department can accept documentation of military service for credit and Social Security benefit projection documents, etc.

*Policy Analysis.* The statutes and administrative code do not provide any deadlines for receiving any of the following items: documentation of active military service for WRS service credit; Social Security Administration benefit projections used to calculate or recalculate accelerated payment options; applicants' requests to change annuity effective dates; requests to change benefit selections from lump sums to monthly annuities or vice versa; or named joint survivors. Also, the amount of applicants' benefits, and even the types of benefits for which they are eligible, may in some cases depend in part on the application receipt dates. This proposed rule would establish the minimum information which must be provided on an application to establish an application receipt date, and deadlines for receiving documentation and requests for benefit changes that could affect applicants' benefits.

Finally, the proposed rules would establish the benefits to which applications would default if applicants fail to complete certain information on the application, or the applications are in some other manner not completed correctly. Applicants would have the opportunity to correct the applications, thereby protecting their right to choose. However, in some situations these default benefits could be critical in protecting beneficiaries' benefit rights in situations where applicants die before having an opportunity to correct their applications.

*Policy Alternatives to the Proposed Rule.* The alternative to promulgating this rule would be that there would continue to be no clear definition of the deadlines for certain changes that applicants may wish to make to their applications, nor minimum standards for valid applications that would enable the Department to determine with certainty who has applied for benefits, the benefit effective dates and the types of benefit for which applicants are applying. There would also be no clear deadlines for accepting certain documentation that could affect applicants' benefits, nor default benefits established that can protect participants', alternate payees'

or beneficiaries' benefit rights. This can result in inefficient administration of benefits and inconsistent and inequitable treatment of different benefit applicants.

#### Statutory Authority

Section 40.03 (2) (i), Stats.

#### Staff Time Required

The Department estimates that state employees will spend 120 hours developing this rule.

### Financial Institutions – Banking

#### Subject

Section DFI–Bkg 8.04 — Relating to stating the name and location of office on bank checks.

#### Description of Policy Issues

*Objective.* The objective of the rule is to repeal s. DFI–Bkg 8.04.

*Description of existing relevant policies and new policies proposed to be included in the rule and an analysis of policy alternatives.* Section DFI–Bkg 8.04 requires that the name and location of a bank home office shall be stated on all bank checks, and that the name of a bank branch may be state on bank checks. State law on the negotiable instruments, Uniform Commercial Code ss. 403.104, Stats., does not require this information. Federal law on presentment and issuance of checks, 12 CFR 229.36, does not require this information. However, practically a check, both as a negotiable instrument and in the course of presentment, will contain bank identification information. Section DFI–Bkg 8.04 is, therefore, both unnecessary and redundant.

#### Statutory Authority

Sections 220.02 (2) and 227.11 (2), Stats.

#### Staff Time Required

Estimated time to be spent by state employees is 40 hours. No other resources are necessary.

### Natural Resources

#### Subject

Advance notice requirement for demonstrations which attempt to influence public opinion on department lands.

#### Description of Policy Issues

While most protest type activities are protected by the First Amendment, the United States Supreme Court has held that these activities can be the subject of reasonable regulations as to time and place. This rule would create such reasonable measures for department lands. It is difficult to predict which groups might engage in protests on department lands in the future.

Recent protests on department lands have shown that it is very difficult for department law enforcement officers to react promptly when advanced notice is not received. This creates safety problems for both the protesters and other land users. The ability of protesters to engage in protests anywhere on the department property also makes it difficult to provide law enforcement services.

#### Statutory Authority

Sections 23.09 (2), 23.11 (1), 27.01 (2) and 227.11 (2) (a), Stats.

#### Staff Time Required

The Department estimates that state employees will spend 54 hours developing this rule.

## Natural Resources

### Subject

Chapter NR 25 – Relating to commercial fishing – outlying waters.

### Description of Policy Issues

The department proposes to modify the criteria used in relicensing commercial fishers on the Great Lakes. Licenses are not issued to fishers who are no longer active in the fishery, and it is essential to retain meaningful criteria for identifying inactive licensees. Presently, a harvest-based criterion (the minimum-catch requirement) is used. In the past an effort-based criterion has also been used. The present standard may not be sufficiently flexible in years when uncontrolled natural events cause sharp declines in reported harvests. Any change to the criteria would be of direct interest to all commercial fishers. The Lake Michigan Commercial Fishing Board has asked the department to consider revising the relicensing criteria.

The basic policy of maintaining meaningful criteria for defining active fishers and renewing licenses will be retained. The proposed rule change would modify the criteria and provide flexibility for dealing with changing fish abundance.

### Statutory Authority

Section 29.519 (1) (b) and (c), Stats.

### Staff Time Required

The Department estimates that state employees will spend 56 hours developing this rule.

## Natural Resources

### Subject

Authorization to begin drafting an emergency rule and permanent rule to revise ch. NR 6, pertaining to the snowmobile safety and enforcement programs.

### Description of Policy Issues

The emergency rule and permanent rule defines unreasonable or improper snowmobile speed to include operation of a snowmobile above 50-mph during the hours of darkness. The user group affected would be snowmobilers who operate snowmobiles during the hours of darkness. The interested parties would include: Sheriff's patrols, the Governor's Snowmobile Recreation Council, the Association of Wisconsin Snowmobile Clubs, The Wisconsin

Counties Association, Wisconsin Department of Tourism, and the International Snowmobile Manufacturers Association.

There is no current policy, law or rule determining specific circumstances, which constitute unreasonable or improper snowmobile speed. Conservation wardens investigated 38 fatal snowmobile crashes during the 1999–00 snowmobile season. Of the 38 fatalities, 10 deaths could be directly attributed to excessive speed during the hours of darkness. Additionally, 14 other deaths may have been avoided if the operators had observed prudent speeds to avoid night hazards. Enforcement efforts documented over the past 10 years, show excessive night speed as one of the primary contributing factors leading to fatal crashes. The enforcement of the proposed rule could substantially decrease fatalities during the hours of darkness. The National Children's Center notes excessive snowmobile speed is a leading contributing factor to injuries among snowmobilers. Annually, National statistics indicate Wisconsin has over 1,400 injuries resulting from unreasonable or improper speed during the hours of darkness.

### Statutory Authority

Section 227.11 (2) (a), Stats., interpreting s. 350.10 (1) (a), Stats.

### Staff Time Required

The Department estimates that state employees will spend 34 hours developing this rule.

## Natural Resources

### Subject

Housekeeping and minor, non-controversial changes in chapters NR 20, 21 and 50, relating to sport and commercial fishing on the inland, outlying and boundary waters of Wisconsin.

### Description of Policy Issues

These are non-controversial housekeeping changes and minor adjustments being proposed after a major rewrite of ch. NR 20, as well as corrections and minor changes to chs. NR 21 and 50.

### Statutory Authority

The proposed rule/board action is based on a general authorization, with no specific direction that rules must be developed – s. 29.014, Stats.

### Staff Time Required

The Department estimates that state employees will spend 117 hours developing this rule.



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## SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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### Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

*Please check the Bulletin of Proceedings for further information on a particular rule.*

#### **Agriculture, Trade and Consumer Protection**

##### **Rule Submittal Date**

On October 19, 2000, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority: ss. 93.07 (1) and 95.197 (2)

The proposed rule—making order affects ch. ATPC 10, relating to the reimbursement of Johnne's disease testing costs.

##### **Agency Procedure for Promulgation**

A public hearing is required and hearings are scheduled for November 28 and 30, 2000.

##### **Contact Information**

If you have questions, please contact:

Lynn Miller  
Telephone: (608) 224-4883  
Mailing Address:  
Animal Health Division  
Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive  
P.O. Box 8911  
Madison, WI 53718-6777

#### **Agriculture, Trade and Consumer Protection**

##### **Rule Submittal Date**

On October 19, 2000, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority: s. 93.07 (1)

The proposed rule—making order affects ch. ATPC 11, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state.

##### **Agency Procedure for Promulgation**

A public hearing is required and hearings are scheduled for November 28 and 30, 2000.

##### **Contact Information**

If you have questions, please contact:

Lynn Miller  
Telephone: (608) 224-4883  
Mailing Address:  
Animal Health Division  
Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive  
P.O. Box 8911  
Madison, WI 53718-6777

#### **Agriculture, Trade and Consumer Protection**

##### **Rule Submittal Date**

On October 24, 2000, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority: s. 93.07 (1)

The proposed rule—making order affects s. ATPC 74.08 (1), relating to fees required of agent cities and counties that license and inspect retail food establishments.

##### **Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later date.

##### **Contact Information**

If you have questions, please contact:

Tom Leitzke  
Telephone: (608) 224-4711  
Mailing Address:  
Food Safety Division  
Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive  
P.O. Box 8911  
Madison, WI 53718-6777

#### **Elections Board**

##### **Rule Submittal Date**

On October 30, 2000, the State Elections Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a)

The proposed rule—making order affects ch. ElBd 2, relating to the procedure for correcting previously filed nomination papers and the procedure for challenging nomination papers.

##### **Agency Procedure for Promulgation**

A public hearing is not required and rules will be promulgated pursuant to the 30-day notice procedure under s. 227.16 (2) (e), Stats.

##### **Contact Information**

If you have questions, please contact:

George A. Dunst  
Telephone: (608) 266-0136  
Mailing Address:  
State Elections Board  
P.O. Box 2973  
132 East Wilson Street, 2nd Floor  
Madison, WI 53701-2973

#### **Health and Family Services**

##### **Rule Submittal Date**

On October 23, 2000, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: ss. 51.42 (7) (b), 51.421 (3) (a) and 227.11 (2) (a)

The proposed rule-making order affects ch. HFS 36, relating to comprehensive community services for persons with mental illness.

**Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later date.

**Contact Information**

If you have questions, please contact:

Chris Hendrickson  
Telephone: (608) 267-9282

Mailing Address:  
Division of Supportive Living  
Dept. of Health and Family Services  
One West Wilson Street  
Madison, WI 53703

**Health and Family Services****Rule Submittal Date**

On October 26, 2000, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: ss. 49.77, 49.775 and 227.11 (2)

The proposed rule-making order affects ch. HFS 79, relating to state supplemental security income payments to low income and disabled residents.

**Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later date.

**Contact Information**

If you have questions, please contact:

Kathleen Luedtke  
Telephone: (608) 266-6890

Mailing Address:  
Division of Supportive Living  
Dept. of Health and Family Services  
One West Wilson Street  
Madison, WI 53703

**Health and Family Services****Rule Submittal Date**

On October 27, 2000, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: ss. 50.49 (2) and 227.11 (2)

The proposed rule-making order affects ch. HFS 133, relating to home health agencies.

**Agency Procedure for Promulgation**

Public hearings have been scheduled on November 28, 29 and 30, 2000.

**Contact Information**

If you have questions, please contact:

Julie Hagen  
Telephone: (608) 266-3306

Mailing Address:  
Bureau of Quality Assurance  
Dept. of Health and Family Services  
One West Wilson Street  
Madison, WI 53703

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board****Rule Submittal Date**

On October 23, 2000, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) and 457.08

The proposed rule-making order relates to clinical social work concentration and supervised clinical field training.

**Agency Procedure for Promulgation**

A public hearing is required and will be scheduled at a later date.

**Contact Information**

If you have questions, please contact:

Pamela Haack  
Telephone: (608) 266-0495

Mailing Address:  
Office of Administrative Rules  
Dept. of Regulation and Licensing  
Rm. 171, 1400 E. Washington Avenue  
Madison, WI 53703

**Transportation****Rule Submittal Date**

On October 31, 2000, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: s. 227.14 (4m)

The proposed rule-making order relates to outdoor advertising sign annual fees.

**Agency Procedure for Promulgation**

A public hearing is required and is scheduled for November 30, 2000.

**Contact Information**

If you have questions, please contact:

Julie Johnson  
Telephone: (608) 267-3703

Mailing Address:  
Dept. of Transportation  
Office of General Counsel  
Rm. 115B, 4802 Sheboygan Avenue  
Madison, WI 53707-7910

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# NOTICES

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## Notice of Hearings Agriculture, Trade and Consumer Protection [CR 00–145]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis “non–modified accredited” states. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rules. Following the public hearings, the hearing record will remain open until **December 8, 2000**, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224–4883. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **Friday, November 17, 2000**, by writing to Lynn Miller, Division of Animal Health, P.O. Box 8911, Madison WI. 53708–8911, telephone (608) 224–4883. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

Two hearings are scheduled:

**Tuesday, November 28, 2000, 6:30 pm until 8:30 pm**  
**Dept. of Agriculture, Trade and Consumer Protection**  
**Board Room**  
**2811 Agriculture Drive**  
**Madison, WI 53704**  
**Handicapped accessible**

**Thursday, November 30, 2000, 6:30 pm until 8:30 pm**  
**Dept. of Agriculture, Trade and Consumer Protection**  
**Conference Room**  
**3610 Oakwood Hills Parkway**  
**Eau Claire, WI 54701–7754**  
**Handicapped accessible**

### Analysis prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutory Authority: s. 93.07 (1)

Statute Interpreted: ss. 93.07 (10), 95.20 and 95.25

In order to protect animals and the public from bovine tuberculosis, this rule restricts the importation of animals from states that the United States department of agriculture (USDA) has classified as tuberculosis “non–modified accredited”.

### Background

Bovine tuberculosis (TB) is an infectious disease caused by *Mycobacterium bovis* (*M. bovis*). It is generally described as a chronic debilitating disease of cattle but it may have an acute, rapidly progressive course. It can cause disease in most warm–blooded vertebrates, including humans. If TB becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in the state.

The Wisconsin department of agriculture, trade and consumer protection (department) administers a TB eradication program in cooperation with USDA. After several decades of intense effort, the disease was nearly eradicated in the United States. But recently, the USDA reclassified Michigan from “accredited–free” to “non–modified accredited” because TB was confirmed in several cattle herds and in several native white–tailed deer.

TB is easily transmitted. Wisconsin imports a substantial number of animals from Michigan, and the last known incident of TB in a bovine animal in Wisconsin involved an animal that was imported from Michigan. For these reasons, the department proposes to regulate the import of animals that originate from “non–modified accredited” states.

### Pre–Import Requirements

Under this rule, bovine animals, goats and cervids imported to Wisconsin from a tuberculosis “non–modified accredited” state must be accompanied by a certificate of veterinary inspection. The importer must obtain an import permit from the department.

The veterinarian who completes the certificate of veterinary inspection must certify that the animal originates from a herd in which a whole herd TB test has been completed within the last 12 months. The veterinarian must certify that the whole herd test included every animal over 6 months of age in the herd, and that all test results were negative.

An imported animal must be individually tested for tuberculosis within 60 days (90 days for a cervid) prior to the import date, unless the animal is less than 6 month old on the import date. The test may be performed as part of a whole herd test if the whole herd test is performed within 60 days (90 days for a cervid) prior to the import date.

### Post–Import Testing

An animal imported to Wisconsin from a tuberculosis non–modified accredited state must be tested for tuberculosis not less than 90 days nor more than 120 days after it is imported. This testing requirement does not apply to feeder cattle that are confined to the receiving premises until they are shipped to slaughter. (The feeder cattle, when shipped to slaughter, must be accompanied by USDA form VS1–27.)

### Post–Import Confinement

Animals imported to Wisconsin from a tuberculosis non–modified accredited state may not be commingled with any other animals in this state, or removed from the premises at which they are first received in this state, until they test negative for tuberculosis or are shipped to slaughter.

## Exception

This rule does not apply to animals that are imported directly to a slaughtering establishment for slaughter.

## Fiscal Estimate

The Department anticipates costs to the Department of approximately \$2000 as a result of this rule. The Department can accommodate these costs in its current budget. The Department does not anticipate any additional costs to counties or other local governments.

## Initial Regulatory Flexibility Analysis

This rule will affect small businesses that import bovine animals, goats or cervids into this state. It requires the operator of those businesses to either refrain from importing bovine animals, goats or cervids from states the United States department of agriculture has designated as tuberculosis non-modified accredited states, or to comply with the standards this rule establishes to assure that the animals that are imported are not infected with bovine tuberculosis.

At the present time, the USDA has only designated one state, Michigan, as non-modified accredited. If the small business operator imports bovine animals, goats or cervids from Michigan, the operator will need to assure that the animal originates from a herd which has tested negative for tuberculosis within the past 12 months and that the animal has tested negative within the past 60 days (90 days for cervids). This places a burden on the business operator but it does not completely prohibit import of animals from Michigan. The burden of assuring that the animals have been properly tested is minimal compared to the burden that would be experienced by Wisconsin's animal agriculture industry if bovine tuberculosis is introduced to Wisconsin by an animal imported from a non-modified accredited state.

This rule requires persons, including small business operators, who import animals from non-modified accredited states to have the animals retested for tuberculosis after being imported. The imported animals must be kept segregated from other animals until the retest is completed. These requirements add costs for the importer, but the costs that would be incurred if infected animals are imported without these precautions are substantially higher. And, the importer has the ability to avoid these costs entirely by importing animals from other states of origin rather than from a non-modified accredited state.

## Notice of Hearings Agriculture, Trade and Consumer Protection [CR 00-146]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule relating to reimbursement of Johne's Disease testing costs. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until December 8, 2000, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4883. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **Friday, November 17, 2000**, by writing to Lynn Miller, Division of Animal Health, P.O. Box 8911, Madison WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Two hearings are scheduled:

**Tuesday, November 28, 2000, 2:00 pm until 4:00 pm**  
**Dept. of Agriculture, Trade and Consumer Protection**  
**Board Room**  
**2811 Agriculture Drive**  
**Madison, WI 53704**  
**Handicapped accessible**

**Thursday, November 30, 2000, 2:00 pm until 4:00 pm**  
**Dept. of Agriculture, Trade and Consumer Protection**  
**Conference Room**  
**3610 Oakwood Hills Parkway**  
**Eau Claire, WI 54701-7754**  
**Handicapped accessible**

## Analysis prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutory Authority: ss. 93.07 (1) and 95.197 (2)

Statute Interpreted: s. 95.197

Johne's disease (paratuberculosis) is a serious disease of cattle. The 1999-2001 biennial budget act (1999 Wis. Act 9) established a grant program to help cattle owners pay for Johne's disease testing. The department of agriculture, trade and consumer protection (DATCP) administers the grant program. This rule establishes standards for the grant program, as required by the biennial budget act.

## Background

Under s. 95.197, Stats., and current DATCP rules, a seller warrants that cattle are free of Johne's disease at the time of sale unless the seller discloses to the prospective buyer the current Johne's disease herd classification of the source herd. Every herd of cattle has a Johne's disease herd classification.

A herd is automatically classified "maximum risk for Johne's disease" unless DATCP assigns a different herd classification based on an annual herd test. DATCP may assign one of several herd classification, based on annual herd test results. An annual herd test is voluntary. A herd owner may arrange and pay for an annual herd test, and may ask the department to classify the herd based on the test results.

## Grant Program

The biennial budget act (1999 Wis. Act 9) provided \$100,000 in grant funds FY 2000-01 to help cattle owners pay for annual Johne's disease herd tests. Under this rule, a herd owner who asks the department to classify a herd based on an annual herd test may apply for reimbursement of laboratory costs associated with the annual test. When DATCP classifies the herd, it will tell the herd owner how to apply for reimbursement.

To obtain reimbursement, a herd owner must file a claim by February 1 of the year following the year in which the herd owner tests the herd. The herd owner must submit copies of bills that establish the amount of laboratory costs charged to the herd owner. DATCP will distribute available funds by June 30 (following the February 1 annual application deadline).

DATCP may reimburse all or part of an applicant's claim, depending on available funding. If allowed claims exceed available funding, DATCP will pay each herd owner a pro rata share based on the amount of each herd owner's allowed claim. A herd owner may not resubmit the unpaid portion of a claim in a subsequent year.

### **Fiscal Estimate**

The Department estimates that 2400 herds will be classified over a 12 month period and that 80% of the herd owners will file a reimbursement claim. If each claim requires 20 minutes to review and enter data for payment, the cost for salary and fringe will be \$12,600. We estimate postage will cost \$600 per year. The department will absorb these costs in the existing budget by reprioritizing staff assignments and expenses.

This estimate covers costs for the first year of the program only. Herd participation is expected to increase approximately 20 to 50% each year. This will also increase costs incurred by the department at a similar rate. At some point in time, the department may not be able to absorb the costs.

### **Small Business Analysis**

This rule will help cattle owners by reimbursing Johne's disease testing costs. The department has minimized procedural requirements related to reimbursement application, so that it will be easy for herd owners to apply. The department has included only those requirements that are necessary to ensure financial accountability in the distribution of public funds. This rule gives herd owners a substantial amount of time to apply for reimbursement. Herd owners must simply document the laboratory costs for which they seek reimbursement. DATCP will give herd owners information on how to apply.

### **Initial Regulatory Flexibility Analysis**

This rule establishes standards for the grant program created by 1999 Wis. Act 9 to assist cattle owners in paying for Johne's disease testing. It will affect cattle owners who wish to obtain reimbursement for a portion of the costs incurred to test their herds for Johne's disease.

When a herd owner has his herd tested for Johne's disease and requests that the herd be classified on the basis of that test, the department will advise the herd owner that he or she is eligible to participate in the grant program. To participate in the grant program, the herd owner must file a claim no later than February 1 of the year following the calendar year in which the herd was tested. The owner must provide copies of bills from either the veterinarian or the laboratory to establish amount of laboratory costs incurred.

This claim filing process is the least onerous possible that is consistent with the state's need to audit and assure that grants are only given in appropriate amounts to eligible owners. The rule permits filing the claim anytime between the date their herd is classified and February 1 of the year after the testing is conducted. This allows significant flexibility for the animal owner.

It is not anticipated that the animal owner will need any significant professional skills to complete the claim form and become eligible for a grant under this rule.

## **Notice of Proposed Rule Elections Board [CR 00-153]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss. 8.02, 8.04, 8.05 (3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30, 8.50 (3) (a) and 9.10, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the State of Wisconsin Elections Board will adopt the following rules as proposed in this notice without public hearing unless within 30 days after publication of this notice, on November 15, 2000, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

### **Analysis Prepared by State Elections Board:**

Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a)

Statutes interpreted: ss. 8.02, 8.04, 8.05 (3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30, 8.50 (3) (a) and 9.10

The rule prescribes the standards for filing officers to determine whether nomination papers comply with the requirements of ch. 8, Stats., and provides guidance to candidates and other circulators to enable them to so comply. The old rule was no longer consistent with board policy and practice or with the legislature having changed the circulator's affidavit to a circulator's certificate. Nomination papers now are required to be numbered. Also, nomination paper errors that can be corrected must be corrected within three days of the filing of the nomination paper being corrected. Challenge complainants are now required to deliver a copy of their challenge complaint within 24 hours of their challenge and both challenge complainants and respondents are given three calendar days, not business days, in which to file their pleadings.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227. (11) (2) (a), Stats., the Elections Board hereby amends ss. ElBd 2.05 (2) and 2.07 (2) (a) and (b) and creates s. ElBd 2.05 (16) (f), interpreting ss. 8.02, 8.04, 8.05 (3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30, 8.50 (3) (a) and 9.10, Stats., as follows:

**SECTION 1.** ElBd 2.05 (2), (14) and (16) (b) are amended to read:

ELBD 2.05 Treatment and sufficiency of nomination papers

(2) In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline. Each of the nomination papers shall be numbered, before they are filed, and the numbers shall be assigned sequentially, beginning with the number "1".

(14) No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the affidavit certificate of circulator ~~under oath~~ and does so after, not before, the paper is circulated. No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.

(16) (b) The signature is dated after the date of ~~notarization~~ certification contained in the affidavit certificate of circulator.

**SECTION 2.** ElBd 2.05 (16) (f) is created to read:

(f) Notwithstanding any other rule, nomination paper errors in information, supplied by either a signer or a circulator, may be corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit must have personal knowledge of the correct information and the correcting affidavit must be filed with the filing officer not later than three days after the due date for the nomination papers being corrected.

**SECTION 3.** ElBd 2.05 (15) is repealed and the following subsections are re-numbered:

ElBd 2.05 (16) is re-numbered ElBd 2.05 (15)

ElBd 2.05 (17) is re-numbered ElBd 2.05 (16)

ElBd 2.05 (18) is re-numbered ElBd 2.05 (17)

**SECTION 4.** ElBd 2.07 (2) (a) and (2) (b) are amended to read:

ElBd 2.07 Challenges to nomination papers. (2) (a) Any challenge to the sufficiency of a nomination paper shall be made by verified complaint, filed with the appropriate filing officer. A copy of the complaint shall be delivered to the respondent within 24 hours of the complaint being filed with the filing officer. The form of the complaint, and its filing and its service shall comply with the requirements of ch. ElBd 10. Any challenge to the sufficiency of a nomination paper shall be filed within 3 business calendar days after the filing deadline for the challenged nomination papers. The challenge shall be established by affidavit, or other supporting evidence, demonstrating a failure to comply with statutory or other legal requirements.

(2) (b) The response to a challenge to nomination papers shall be filed, by the candidate challenged within 3 business calendar days of the filing of the challenge and shall be verified.

#### **Initial Regulatory Flexibility Analysis:**

The creation of this rule does not affect business.

#### **Fiscal Estimate:**

The creation of this rule has no fiscal effect.

#### **Contact Person:**

George A. Dunst  
Legal Counsel, State Elections Board  
132 E. Wilson Street, P.O. Box 2973  
Madison, Wisconsin 53701-2973  
Phone 266-0136

### **Notice of Hearing Health & Family Services (Community Services, Chs. HFS 30-) [CR 99-71]**

NOTICE IS HEREBY GIVEN that, pursuant to s. 48.57 (3m) (ar), Stats., the Department of Health and Family Services will hold a public hearing to consider the creation of ch. HFS 58, Wis. Adm. Code, relating to standards for the operation of the Kinship Care Program.

#### **Hearing Information**

The public hearing will be held:

**November 29, 2000  
Room B139  
Wednesday State Office Building  
From 1 p.m. to 3 p.m.  
1 W. Wilson Street  
Madison, WI**

The hearing site is fully accessible to people with disabilities.

Parking for people with disabilities attending the Madison hearing is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp and in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

#### **Analysis prepared by the Department of Health and Family Services**

Kinship care is care and maintenance of a child who resides outside of the child's own home, either temporarily or for the long term, with a relative who could be an adult brother or sister, a first cousin, a nephew or niece, an uncle or aunt or a grandparent, among others.

A recent session law, 1995 Wisconsin Act 289, created ss. 48.57 (3m), (3p) and (3t), Stats., which authorize a county or tribal child welfare agency to make a monthly payment of \$215, called a kinship care benefit, to an approved relative to help the relative provide care and maintenance for the child. These payments started on January 1, 1997 and by January 1, 1998 had replaced income maintenance payments under s. 49.33, Stats., for care provided by non-legally responsible relatives. The kinship care statutes were amended in October 1997, effective January 1, 1998, by 1997 Wisconsin Act 27 to make the Department responsible for administration of the kinship care program in Milwaukee County. The statutes were amended again in April 1998 by 1997 Wisconsin Act 105 to add sub. (3n), relating to long-term kinship care, and in June 1998 by 1997 Wisconsin Act 237 to direct the Department to promulgate rules which set forth criteria for determining the eligibility of a kinship care relative to receive the monthly kinship care payment.

These are the Department's rules for the kinship care program. The rules cover conditions for applying for a benefit; how to apply for a benefit; agency review of applications; requesting an exemption for good cause from the requirement to cooperate with the agency in securing payment of child support; eligibility criteria, under the headings of need of the child for the kinship care living arrangement, best interests of the child and jurisdictional considerations; the use of waiting lists; reassessment at least annually of a kinship care relative's eligibility; and appeal rights of an applicant who has been denied a kinship care benefit or of a kinship care relative whose benefit has been discontinued following a reassessment.

Hearings on this proposed rulemaking order were previously held by the Department on June 14, 15 and 21 in 1999. Following those hearings, the Department made changes to the proposed rulemaking order unrelated to either comments it received from the Legislative Council Rules Clearinghouse or the public. Consequently, the Department is holding an additional hearing on the proposed rules before proceeding with the rule's promulgation.



## Contact Person

To find out more about the hearings or to request a copy of the proposed rules, write or phone:

Mark S. Mitchell  
Bureau of Programs and Policies  
P.O. Box 8916  
Madison, WI 53708-8916  
(608) 266-2860 or,  
if you are hearing impaired,  
(608) 266-7376

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number shown above. Persons requesting a non-English or sign language interpreter should contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **November 30, 2000** will be given the same consideration as testimony presented at the hearing.

## Fiscal Estimate

County departments of social services or human services and tribal child welfare agencies have been authorized since July 1996 under s. 48.57 (3m), (3p) and (3t), Stats., to make a monthly payment of \$215, called a kinship care benefit, to an approved non-parent relative of a child to help the relative provide care and maintenance for the child. The statutes were amended in April 1998 to make the Department responsible for administration of the program in Milwaukee County. The statutes were amended again in June 1998 to direct the Department to promulgate rules which set forth criteria for determining the eligibility of a relative to receive the monthly payment.

The program is administered by counties and tribes, and by the Department in Milwaukee County, any of which may contract with a public or private agency to administer all or part of the program.

These are the rules. They will not affect the expenditures or revenues of state government or local governments. The total costs of the monthly payments and the costs of program administration were taken into consideration by the Legislature when the program was authorized. The state pays the costs of the monthly payments, reimbursing counties, tribes and the Department under a sum certain appropriation. The costs of program administration are also borne by state government.

## Initial Regulatory Flexibility Analysis

These rules will not directly affect small businesses as “small business” is defined in s. 227.114 (1) (a), Stats. The rules apply to the persons applying for kinship care benefits, to relatives who are receiving those benefits on behalf of children residing with them, to county departments and tribal child welfare agencies administering the kinship care program, to the department as it administers the kinship care program in Milwaukee County and to other agencies under contract with the department, a county department or a tribal child welfare agency for the purpose of administering the kinship care program.

## Notice of Hearings Health and Family Services (Health, Chs. 110-) [CR 00-151]

NOTICE IS HEREBY GIVEN that pursuant to ss. 50.49 (2) and 227.11 (2) (a), Stats., the Department of Health and Family Services will hold a public hearing to consider the proposed amendment of ss. HFS 133.06 (4) (d) 1., 133.10 (1) and 133.20 (4); repeal and recreation of s. HFS 133.02 (6g), 133.03 (3) (h) (Note), 133.03 (4) (b), 133.09 (3); and creation of ss. HFS 133.02 (6m), 133.02 (8g), 133.02 (8g) (Note), 133.03 (4) (d), and 133.14 (6), relating to home health licensure.

## Hearing Information

The public hearings will be held:

### Date & Time

**November 28, 2000**  
**Tuesday**  
**9:00 a.m. to 12:00 p.m.**

**November 29, 2000**  
**Wednesday**  
**9:00 a.m. to 12:00 p.m.**

**November 30, 2000**  
**Thursday**  
**9:00 a.m. to 12:00 p.m.**

### Location

**Room 45**  
**819 N. 6th Street**  
**Milwaukee, WI**

**Room 950A**  
**1 W. Wilson Street**  
**Madison, WI**

**Falls Room**  
**Park Inn Hotel**  
**2001 North Mountain Road**  
**Wausau, WI**

The hearing sites are fully accessible to people with disabilities.

## Analysis prepared by the Dept. of Health and Family Services

The Department's rules for licensing home health agencies are in ch. HFS 133, Wis. Adm. Code. The rules were originally issued in June 1984 and were substantially revised in November 1985. Through this rulemaking order, the Department is proposing to change the basis for calculating license fees, incorporate policies already in place due to statewide variances and bureau memos, and define procedures for discharge and rights of patients upon discharge and update license requirements.

Specifically, the home health agency licensing rules are being revised to:

1. Change the basis for the Department's program funding from annual net income to patient fee revenue in accordance with 1999 Wis. Act 9 amending s. 50.49 (2) (b). The change is expected to increase license fees for some home health agencies, decrease license fees for other agencies, and, combined, generate additional program revenue for the Department to be used in regulating home health agencies.

2. Incorporate existing policy interpretations from bureau memos and statewide variances into the rule. The memos include BQC-94-046, BQC-94-071 and DSL-BQA-99-028.

3. Create and define the home health agency's role and consumer's rights related to discharge.

4. Update the rule with a license requirement that specifies the home health agency's need to serve a minimum number of skilled care patients in order to be eligible for initial Medicare certification.

### Contact Person

To find out more about the hearing or to request a copy of the proposed rules, write, phone or e-mail:

Julie Hagen  
Bureau of Quality Assurance  
P.O. Box 2969  
Madison, WI 53701-2969  
(608) 266-3306 or,  
if you are hearing impaired, (608) 266-7376 (TTY)  
[hagenja@dhfs.state.wi.us](mailto:hagenja@dhfs.state.wi.us)

If you are hearing or visually impaired, do not speak English, or have circumstances that might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments received by mail or e-mail at an above address no later than 5:00pm, **December 8, 2000**, will be given the same consideration as testimony presented at a hearing.

### Fiscal Estimate

The amendments to ch. HFS 133 will affect the revenue of state government. The proposed change for determining license fees will maintain fees within the current \$500 to \$2,500 range, but the proposed method for calculating the license fee is a more equitable way to distribute the cost of supporting the regulatory activities of the Department. Based on 1998 data, the proposed rules would have the effect of increasing the licensure fee for 54 home health agencies to \$2,500. Conversely, the proposed rules would decrease the license fees of 12 home health agencies. The proposed method for calculating the license fee will make the license fee commensurate with the home health agency's revenues.

### Initial Regulatory Flexibility Analysis

The revision of ch. HFS 133 will affect home health agencies. Based on 1998 reporting of gross revenue, 156 of 172 home health agencies met the definition of small business under s. 227.114 (1) (a), Stats.

The proposed revisions to ch. HFS 133 clarify the home health agency responsibilities regarding patient discharge. Specifically, a home health agency will be required to give written notice to patients or their legal representatives prior to or at the time of discharge, have a nursing professional create a summary for every patient discharge and provide that summary to the former patient and physician, if requested. These new documentation requirements are being proposed for the purpose of patient safety and reflect desirable medical practice. Therefore, the Department has not proposed specific exemptions from these requirements for agencies that are small businesses.

The Department is also proposing rule revisions regarding license fees. The proposed changes to the way the annual license fee is calculated will not require a home health agency to adopt any new reporting or bookkeeping procedures. Although many home health agencies generated less than \$2.5 million defined in s. 227.114, Stats., in 1999, 71 of 172 home health agencies reported gross patient revenues of \$1 million dollars or more. Many of these agencies paid the same minimum \$500 license fee as agencies with significantly less gross patient revenue. Home health agencies that are "small businesses," as defined in s. 227.114, Stats., cannot be exempted from these fees without jeopardizing the Department's revenue it uses to inspect and otherwise regulate home health agencies. For this reason and the fact that an agency's size as measured by its annual revenue was already considered when setting the fee range, the Department is not proposing exemptions or alternatives for home health agencies to the proposed license fee calculation.

## Notice of Hearings

### Natural Resources

#### (Fish, Game, etc., Chs. NR 1-)

(Revised notice from 10/31/00 Wis. Adm. Register)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.889 and 227.11, Stats., interpreting ss. 29.177, 29.181, 29.361 and 29.889, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 1, 10, 12 and 19, Wis. Adm. Code, relating to deer hunting and the wildlife damage abatement and claims program. The following proposals would establish a new deer season framework for 2001 and beyond:

1. Create a permanent 4-day December antlerless deer season.
2. Begin the early archery season on the Saturday closest to September 15.
3. End the early archery season on the Thursday before Thanksgiving.
4. Begin the late archery season on the Monday after Thanksgiving.
5. End the late archery season on the Saturday closest to January 15.
6. Extend the muzzleloader season by 3 days.
7. Establish a one-day youth gun deer hunt the Saturday closest to October 24.

The proposed rule also establishes a statewide protocol for deer herd control seasons as follows:

1. Adds a 4-day antlerless only gun season beginning on the Thursday nearest October 22 if the season structure outlined above is not expected to bring a deer herd within 20% of the established population goal for a deer management unit.
2. Adds either an earn-a-buck **or** an antlerless only requirement to the season structure after 2 years of herd control seasons if the season structure outlined above is not expected to bring a deer herd within 20% of the established population goal for a deer management unit.
3. Eliminates the requirement of public meetings in the affected units and Natural Resources Board approval.
4. Expands the herd control authority from only farmland units to all deer management units.

The proposed rule adds criteria to be considered by the Department when establishing deer population goals for deer management units including:



1. Hunter success in harvesting and seeing deer and public deer viewing opportunities, hunter access to private land, and ability to keep herds in a deer management unit at goal are factors to be considered when establishing goals. These additional criteria along with the 6 current criteria in s. NR 1.15 (2) would be considered when establishing deer population goals.

2. Establishes tolerable standards of agricultural damage and requires the Department to reduce goals when damage exceeds the standards for 2 of 3 years between unit reviews, when the herd was at goal, during the review period, unless a goal reduction is not expected to alleviate intolerable levels of deer damage.

Finally, the proposed rule involves modifications to the current wildlife damage and abatement claims program that require farmers enrolled in the wildlife damage and abatement claims program in a given year who experience \$1,000 or more damage in that year be automatically issued a shooting permit by January 31 the following year. They are then required to meet a harvest objective of 80% of the harvest quota by September 15 in order to qualify for benefits of the wildlife damage abatement and claims program in the following year.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

**December 4, 2000, UW Extension Ag Research Center, Highway 70E, Spooner, Monday at 7:00 p.m.**

**December 4, 2000, Basement Meeting Room, Best Western Royale, 5110 Main Street, Monday, Stevens Point at 7:00 p.m.**

**December 5, 2000, DNR Western Region Hdqrs., 1300 W. Clairemont Ave., Eau Claire, Tuesday at 7:00 p.m.**

**December 5, 2000, Fireside Room, University Transfer Center, Nicolet Area Tech College, County Highway G, Rhinelander, Tuesday at 7:00 p.m.**

**December 11, 2000, Townsend Town Hall, 16564 Elm Street, Townsend, Monday at 7:00 p.m.**

**December 11, 2000, Public Library, 124 W. Main Street, Sparta, Monday at 7:00 p.m.**

**December 12, 2000, Downstairs Meeting Room, Brown Co. Library, 515 Pine St., Green Bay, Tuesday at 7:00 p.m.**

**December 12, 2000, DNR Janesville Service Center, 2514 Morse Road, Janesville, Tuesday at 7:00 p.m.**

**December 13, 2000, Room C101, UW-Waukesha, 1500 N. University Drive, Waukesha, Wednesday at 7:00 p.m.**

**December 13, 2000, Public Library, 502 Main Street West, Ashland, Wednesday at 7:00 p.m.**

**December 14, 2000, DNR Dodgeville Service Center, 1500 N. Johns Street, Dodgeville, Thursday at 7:00 p.m.**

**December 14, 2000, Public Library, 32 Sheboygan Street, Fond du Lac, Thursday at 7:00 p.m.**

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William VanderZouwen at (608) 266-8840 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Initial Regulatory Flexibility Analysis:**

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have a significant economic impact on small businesses.

Written comments on the proposed rule may be submitted to Mr. William VanderZouwen, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than December 15, 2000. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WM-40-00] and fiscal estimate may be obtained from Mr. VanderZouwen.

## **Notice of Hearing Public Service Commission**

NOTICE IS GIVEN that a hearing on a revision of s. PSC 163.04, relating to telecommunications utility price regulation, will be held beginning on **December 6, 2000, at 9 a.m.** in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, and continuing at times to be set by the presiding Administrative Law Judge. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the case coordinator listed below.

### **Analysis prepared by the Public Service Commission of Wisconsin**

Statutory Authority: ss. 196.02 (3), 196.196 (1) (c), and 227.11 Statute Interpreted: s. 196.196 (1) (c).

Section 196.196 (1) (c), Stats., provides for the use of a productivity offset mechanism in determining the amount a price-regulated company may increase or shall decrease its rates for price-regulated services. According to this section, the productivity factor offset to the change in the gross domestic product price index (GDPPPI) shall be 2 percentage points. For a telecommunications utility with more than 500,000 access lines, the percentage offset shall be three percentage points. Pursuant to s. 196.196 (1) (c), Stats., the first time the productivity offset may be changed is after September 1, 2000. Section PSC 163.04 (2) (b) sets forth the factors the Commission may consider in determining any statewide changes in productivity.

According to s. 196.196 (1) (c):

No earlier than 6 years after September 1, 1994, and no more frequently than every 3 years thereafter, the commission may, following notice and an opportunity for hearing, by rule increase or decrease the gross domestic product price index percentage offset by a maximum of one percentage point in any 12-month period to reflect any statewide changes in the productivity experience of the telecommunications industry

The proposed rule interprets this to mean that the Commission may, at this time, change the productivity offset by a maximum of one percent, effective immediately and for each of the next two years. The earliest the Commission could examine these factors again would then be three years after the effective date of this rule.

The objective of the proposed rule revision in this proceeding is to make those changes to s. PSC 163.04 (2) (b) regarding the productivity offset factor deemed necessary as a result of a productivity study for the telecommunications industry in the state pursuant to s. PSC 163.04 (2) (bm). Pursuant to s. PSC 163.04 (2) (bm), each time the productivity factors are reviewed, the Commission shall provide for a productivity study for the telecommunications industry in this state. This study shall address the factors set forth in s. PSC 163.04 (2) (b) plus additional evidence relative to a utility's ability to increase productivity in the future.

### **Written Comments**

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until December 12, 2000, at noon (December 11, 2000, at noon, if filed by fax).

All written comments must include a reference on the filing to docket 1-AC-193. File by one mode only.

If filing by mail, courier, or hand delivery: Address as shown in the box on page 1. Industry parties should submit an original and 15 copies. Members of the general public need only file an original.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet MUST state "Official Filing," the docket number (1-AC-193), and the number of pages (limited to 20 pages for fax comments).

### Text of Proposed Rules

**SECTION 1.** PSC 163.04(2)(b) is amended to read:

~~(b) According to s. 196.196(1)(c), Stats., the productivity factor offset to the GDPPI shall be 2 percentage points. For a telecommunications utility with more than 500,000 access lines, the percentage offset shall be 3 percentage points. Section 196.196(1)(c), Stats., sets the GDPPI percentage offset, but provides that beginning beginning in the year 2000 and every 3 years thereafter, for the purpose of adjusting the GDPPI percentage offset, pursuant to s. 196.196(1)(c), Stats., to reflect any statewide changes in the productivity experience of the telecommunications industry, the commission may consider the following historical factors:~~

**SECTION 2.** PSC 163.04(2)(br) is created to read:

(br) Based on the most recent statewide productivity study, the productivity factor offset to the GDPPI shall be:

(1) For telecommunications utilities with 500,000 or less access lines at the time of electing to be price regulated:

- a. 3 percentage points, effective on the effective date of this rule....[revisor inserts date];
- b. 4 percentage points, effective on one year after the effective date of this rule....[revisor inserts date];

### Initial Regulatory Flexibility Analysis

These rules may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats., because they may elect to become price-regulated under s. 196.196 (1), Stats., which would result in these rules becoming applicable to them. The agency has considered the methods in s. 227.114 (2), Stats., for reducing the impact of the rules on small telecommunications utilities and finds that incorporating any of these methods into the proposed rules would be contrary to the statutory objectives which are the basis for the proposed rules. In addition, the election of price regulation under this chapter is voluntary, and more flexibility and less stringent compliance requirements for small telecommunications utilities are available in ss. 196.195 (12) and 196.196 (4), Stats.

At the time of this notice, there are 81 local exchange companies in Wisconsin, 76 of which are small telecommunications utilities. The agency finds that the availability of a voluntary price regulation election under s. 196.196, Stats., and the process set forth in this chapter to govern the price regulation election are in the public interest for all telecommunications utilities in the state.

### Fiscal Estimate

These rules will have no fiscal impact on the agency or on any other state or local units of government. No additional fiscal burden will be imposed on the state or on small businesses as a result of these proposed rules.

1. Sales volumes.
2. Labor
3. Materials.
4. Rent.
5. Services
6. Other expenses.
7. Plant-in-service.
8. Cost of capital.
9. Any other data relevant to measuring productivity.

Note: The percentage offsets were originally set at 3 percentage points for utilities with more than 500,000 access lines at the time of electing price regulation, and 2 percentage points for utilities with 500,000 or less access lines at the time of electing price regulation.

### Contact Persons

Questions from the media may be directed to Jeffrey L. Butson, Public Affairs Director at (608) 267-0912. Other questions regarding this matter should be directed to Thomas Ferris, case coordinator, at (608) 266-1124, or by email at [ferrit@psc.state.wi.us](mailto:ferrit@psc.state.wi.us). Hearing or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the case coordinator listed above.

## Notice of Hearing Transportation [CR 00-152]

NOTICE IS HEREBY GIVEN that pursuant to s. 84.30, Stats., and interpreting s. 84.30, Stats., the Department of Transportation will hold a public hearing in Room 501 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **30th day of November, 2000, at 9:00 AM**, to consider the amendment of ch. Trans 201, Wis. Adm. Code, relating to outdoor advertising sign annual fees.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business on **December 5, 2000**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Deborah Brucaya, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707-7986.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

### Analysis prepared by the Dept. of Transportation

Statutory Authority: s. 84.30

Statutes Interpreted: s. 84.30

## General Summary of Proposed Rule

1999 Wis. Act 9 directed the Department to assess annual fees to the owners of outdoor advertising signs in order to recoup a portion of the costs of the state's regulatory program governing outdoor advertising structures. The state has regulated outdoor advertising since the 1960's in compliance with the requirements of the Federal Highway Beautification and Bonus Acts, the regulations promulgated by the U.S. Department of Transportation interpreting those acts, and the 1961 and 1972 agreements between the State of Wisconsin and U.S. DOT.

This proposed rule making establishes fees for outdoor advertising structures based upon two criteria: the size of the sign, and the regulatory burden created by the sign. Larger signs tend to generate more income and are less consistent with the stated objective in s. 84.30, Stats., to "preserve the natural beauty" of Wisconsin. Therefore, this rule proposes to create annual fees that increase based upon sign size that range from \$10 per year for signs of 9 to 32 square feet in area to a maximum fee of \$100 per year for signs 1200 square feet in size and above.

Directional and nonconforming signs are assessed a fee of \$100 per sign regardless of size, because regulating those classes of signs requires significantly more resources than regulating other types of permitted signs.

The proposed rule would define some commonly used terms in ch. Trans 201 and this proposed rule making for clarity.

This rule creates s. Trans 201.075 to replace the substantive provisions of current s. Trans 201.02 (3) which is repealed. Current drafting standards call for that provision to be moved from the definition portion of ch. Trans 201.

Finally, this proposed rule spells out what happens if sign permit fees are not timely paid and a process for sign owners to appeal a fee assessment. Nonpayment of a fee for a permitted sign results in the expiration of the permit, subjecting a sign to potential removal. Nonpayment of the fee for a nonconforming sign is considered abandonment subjecting the sign to removal. s. 84.30 (10m), Stats.

Persons wishing to appeal the amount of an assessment need to pay the proposed fee and state particularly the facts regarding the appeal. Because the only issue involved would usually be the size of the sign, the Department believes that any disputes regarding the assessment should be easily resolved by remeasuring the sign. If that does not resolve a dispute, further appeal to the Division of Hearings and Appeals may be sought.

## Fiscal Estimate

The proposed rule implements a provision of 1999 Wisconsin Act 9, the biennial budget, which requires the Department to charge annual fees for outdoor advertising sign owners. The Act limits revenue raised from the program to \$510,000 during Fiscal Year 2001 and provides appropriation authority for \$510,000 to improve the sign inventory information system.

This proposed rule implements the fee provision of the budget and proposes to set annual revenues after FY01 at a rate that covers a larger portion of the program costs through a combination of annual fees, a nonrefundable application fee, and changes to the applicability of the sign company license requirement. The application fee replaces the current one-time fee refundable that has been in effect since 1972.

Under the current program, the following fees are charged generating annual revenue shown:

- A one-time \$5 to \$100 fee based on sign size collected only upon approval of a permit application generates approximately \$25,000 of revenue per year.
- Annual outdoor advertising license fees of \$250 from companies that erect more than two signs per year generates approximately \$7,500 per year.

Under the proposed rule, only nonconforming and grandfathered signs will be assessed a fee for fiscal year 2001. This approach to structuring the applicability of the fee is designed to ease implementation of the fee process by only addressing a portion of the total signs in the first year. Collecting a fee only on nonconforming signs will allow the Department to direct their first billing efforts toward a more manageable number of signs, rather than the entire 15,000 to 20,000 signs in the state.

The approach also works well with the limitation on generating fees for the fiscal year 2001, yet allowing for the fees to generate a more substantial portion of the total program costs in subsequent years. Approximately 5,075 nonconforming signs have been identified in Wisconsin. Collecting a flat \$100 fee on only nonconforming signs should generate approximately \$507,500 in revenue in fiscal year 2001, in accordance with the requirements of s. 9150 (3m) of 1999 Wis. Act 9.

The revenue expected to be generated from annual fees after fiscal year 2001 is \$1,015,280, estimated as shown in the following schedule:

Square Footage	Proposed Fee	Est. # of Signs	Est. Revenue FY 2002
Business Area Signs			
8 or less	\$ 0		
9-32	\$ 10	411	\$ 4,110
33-200	\$ 20	1,646	\$ 32,920
201-600	\$ 25	2,880	\$ 71,975
601-800	\$ 50	823	\$ 41,150
801-1200	\$ 75	823	\$ 61,725
1201 and above	\$ 100	1,234	\$ 123,400
Other (all sizes)			
Directional	\$ 100	1,725	\$ 172,500
Nonconforming or Grandfathered	\$ 100	5,075	\$ 507,500
<b>TOTALS</b>		17,652	\$1,015,280

Fees to be generated by the application fee for new signs is difficult to predict, since fewer applications may be submitted primarily since the fee will be nonrefundable, and to a lesser degree because of the fee increase. For FY01 it is expected that very few new applications would be received subject to the new application fee. The revenue generated by the application fee may approximate or perhaps be slightly less than the fees currently generated from issuance of the one time permits.

### **Initial Regulatory Flexibility Analysis**

The Department expects that the fee schedule established in this rule revision will have a negligible adverse impact on small businesses that use outdoor advertising as a method of advertising. They will now be required to pay between \$5 and \$100 each year for each sign they erect or maintain. The types of small businesses that erect their own outdoor advertising signs are often resorts, campgrounds, antique stores, automotive shops, etc., the majority of which build smaller signs than the standard industry signs. Small business signs are frequently smaller than 150 square feet, which will have an annual fee of \$20. Because the majority of small businesses typically own only two to six outdoor advertising signs, the annual impact is expected to be minimal. For those small businesses that are more reliant on outdoor advertising signs, the costs aspects of choosing this advertising medium will not be significantly impacted by the fees, which are relatively modest in relation to the cost of erecting and maintaining a sign or leasing sign space.

The annual sign fees that would be paid under this proposed rule, both small, independent sign companies that own approximately 20–75 billboards and large, industry sign companies that own hundreds of signs, are expected to be passed on to the advertisers. This new fee should not significantly affect the monthly lease rental rates charged by these companies for outdoor advertising and is not expected to have an effect on sign companies that are considered “small businesses” under s. 227.114, Stats.

Because the Department does not compile or maintain records reflecting the number of employees or annual income of sign companies, establishing less stringent requirements for small businesses, as defined in s. 227.114(1)(a), Stats., is not feasible. Chapter Trans 201 does exempt businesses that erect 2 or fewer signs from the requirements of obtaining a sign company license, and this rule making would not alter that law.

This rule making proposes to exempt official, service club, religious notice signs and signs under 8 square feet in area from an annual fee requirement. Applicants for these types of signs will be required to pay the one-time \$50 sign permit application fee. The Department does not anticipate that this one-time fee will adversely affect small businesses.

Because the rule application process and annual fee billing and payment processes are relatively straightforward and simple, and because DOT district sign permit coordinators are available to assist small businesses in completing permit applications and determining whether a proposed sign site is acceptable under s. 84.30, Stats., the Department concluded further simplifying the permit process or creating different deadline dates for small businesses is unwarranted.

### **Preparation and Copies of Proposed Rule**

Preparation of this proposed rule was done by Attorney John Sobotik. Copies of the rule may be obtained upon request, without cost, by writing to Deborah Brucaya, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707–7986, or by calling (608) 266–3813. Alternate formats of the proposed rule will be provided to individuals at their request.

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# NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE, UNDER S. 227.19, STATS.

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*Please check the Bulletin of Proceedings for further information on a particular rule.*

## **Athletic Trainers Affiliated Credentialing Board** **(CR 00-131)**

Chs. AT 1 to 5 – Relating to licensure and regulation of athletic trainers.

## **Commerce (CR 00-73)**

Chs. Comm 20 to 25 – Relating to the uniform (1-2 family) dwelling code.

## **Health and Family Services (CR 99-157)**

Ch. HFS 175 – Relating to recreational and educational camps.

## **Health and Family Services (CR 00-092)**

Ch. HFS 110 – Relating to licensing of ambulance service providers and licensing of emergency medical technicians– basic.

## **Natural Resources (CR 00-87)**

Ch. NR 101 – Relating to wastewater fee program.

## **Natural Resources (CR 00-89)**

Chs. NR 161 to 163 – Relating to clean water fund program financial assistance.

## **Natural Resources (CR 00-93)**

Ch. NR 168 – Relating to brownfield site assessment grant program administration.

## **Pharmacy Examining Board (CR 00-107)**

Ch. Phar 8 – Relating to dispensing of controlled substances.

## **Public Service Commission (CR 98-170)**

Ch. PSC 179 – Relating to telecommunications dispute resolution procedures.

## **Regulation and Licensing (CR 00-128)**

Chs. RL 90 to 92 – Relating to educational and examination requirements for massage therapists and bodyworkers.

## **Regulation and Licensing (CR 00-141)**

Ch. RL 7 – Relating to standards for approved drug testing programs.

## **Social Workers, Marriage and Family Therapists and Professional Counselors (CR 00-54)**

Ch. SFC 8 – Relating to continuing education programs.

## **Transportation (CR 00-121)**

Ch. Trans 156 – Relating to the automated partnership processing system program.

## **Transportation (CR 00-137)**

Ch. Trans 4 – Relating to the state public transit operating assistance program.

## **Workforce Development (CR 00-127)**

Ch. DWD 22 and chs. HSS 205, 206, 207, 225 and 244 – Relating to obsolete public assistance policies and procedures.

## **Workforce Development (CR 00-129)**

Chs. DWD 12 and 56 – Relating to W-2 eligibility and child care copayments.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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*The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266–7275 for updated information on the effective dates for the listed rules.*

**Administration (CR 00–42)**

An order repealing and recreating ch. Adm 12, relating to electronic records management storage and requirements.  
Effective 5–01–01

**Health and Family Services (CR 00–84)**

An order affecting chs. HFS 101 to 103 and 108, relating to the medicaid purchase plan.  
Effective 12–01–00

**Health and Family Services (CR 00–95)**

An order repealing and recreating ch. HFS 120, relating to the collection, analysis and dissemination of health care information.  
Effective 1–01–01



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